

The Gazette of India



EXTRAORDINARY

PART II—Section 3

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No. 20] NEW DELHI, MONDAY, JANUARY 17, 1955

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 9th December 1954

S.R.O. 179.—Whereas the election of Shri Raj Krushna Bose, as a member of the Legislative Assembly of the State of Orissa, from the Kesanagar constituency of that Assembly, has been called in question by an election petition presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Binode Kanungo of Village Malipur, P.O. Kishorenagar, District Cuttack;

And whereas the Election Tribunal appointed by the Election Commission for the trial of the said petition declared the election of the Respondent No. 1 in the said petition void by an order, dated the 5th September, 1953 and thereafter ceased to exist;

And whereas the Supreme Court of India, on the appeal of the Respondent No. 1, has set aside the order of the Election Tribunal;

And whereas the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the Representation of the People Act, 1951 (XLIII of 1951) for the further trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, CUTTACK

PRESENT

Sri J. K. Misra—*Chairman.*

Sri K. D. Sahay—*Member.*

Sri K. D. Chatterji—*Member.*

The 15th November, 1954

ELECTION PETITION No. 147 OF 1952

ELECTION CASE No. 5 OF 1952

Binode Kanungo, resident of Malipur, P.O. Kishorenagar, District Cuttack—*Petitioner.*

1. Sri Raj Krushna Bose, resident of Ramchandrapur, P.O. Kishorenagar, P.S. Kishannagar, District Cuttack.
2. Sri Biswanath Nanda, resident of Madhusudanpur, P.O. Jagatsinghpur, District Cuttack—*Respondents.*

For Petitioner—Sri A. Das, Advocate, Sri P. Mohanty, Sri B. B. Mohanty and Sri S. Misra, Pleaders.

For Respondent No. 1—Sri S. Mohanty, Sri L. K. Das Gupta, Sri B. K. Pal and Sri G. N. Sen Gupta, Advocates.

JUDGMENT

This petition is for setting aside the election of Shri Raj Krushna Bose, respondent No. 1 to the Orissa Legislative Assembly from Kesanagar Constituency (Constituency No. 75). Besides the prayer for setting aside the election of respondent No. 1, the petitioner has also prayed that he himself be declared elected as a member to the said assembly.

Substantially three main grounds have been taken for declaring the election of respondent No. 1 to be void. Firstly it is said that the respondent No. 1 (who shall hereafter be called respondent only) being at the time of election a Minister of the Province had control and influence over the Government servants whose services he utilised for the furtherance of the prospects of his election and as a first step towards the same got his candidature proposed and recorded by Government servants specifically named in the petition. These Government servants being men of influence and having several persons serving as their subordinates materially influenced the election in favour of the respondent by publicly announcing their open support and by actively working for him. One of them named Debendranath Dutta, a Civil Court employee is said to have caused obstruction to the petitioner's election by assaulting his workers. Besides two of them, namely, Umakanta Praharaj and Sudhir Kumar Roy are said to have worked on promise of Government service in the Transport Department then in charge of the respondent. It is also said that the Government Publicity Van was used by the District Public Relation Officer, Cuttack for propaganda in favour of the respondent.

Secondly it is mentioned that a batch of persons named in the petition moved in the constituency with 'Lathis' in their hands threatening people with all possible harassments in case they would not vote for the Minister respondent. Respondent also is said to have threatened the electors and supporters of the petitioner including one Duryodhan Das. He wrote a letter even to Duryodhan's maternal uncle Sadhu Charan Das, from whom he earns his livelihood by looking after his properties, for preventing him from working for the petitioner and therein he (respondent) held out various threats knowing them to be false. All these instances of assaults, threat and undue influence materially hampered free election in the constituency.

Thirdly it is contended that the respondent submitted return of election expenses which were false in material particulars, e.g., costs of posters, pamphlets etc. received from the Congress Committee were not included, cost incurred in using motor vehicles were not shown, names of, and expenses incurred over, the workers were not given and all expenses incurred and all money outstanding for payment were not mentioned. Payments of workers for election by way of remunerations or rewards from the discretionary grants of the respondent as a Minister have not been included in the election returns though really they were expenses for his election.

By way of amendment in the list of particulars appended to the petition, it is mentioned that a Government servant Janakinath Sahu was appointed as polling agent by the respondent in the Tarikund Booth No. 1. This is said to have been done to obtain the assistance of the Government servants for the furtherance of the prospect of his election.

The respondent No. 1 polled 13,800 votes as against 11,500 votes polled by the petitioner. The petitioner's case is that but for the undue influence coercion, corrupt and illegal practices adopted by respondent No. 1, the petitioner would have got the majority of the valid votes and would have been elected from the constituency.

Respondent No. 2 was another candidate for election from the said constituency but he has not entered appearance in this case.

The respondent filed a recrimination petition under section 97 of the R. P. Act 1951 mentioning in substance that the petitioner could not be declared elected for the corrupt and illegal practices, such as taking assistance from the Government servants besides coercing and threatening the electors and workers of the respondent in various ways. He and his party men published pamphlets containing false and recriminatory statements about the respondent, such as that he was bribe taker, stealer of yarn and water and a Bengali. It was also published in 'Krushak', a Socialist Party paper (the petitioner is a Socialist Party candidate) inducing the voters not to vote for the respondent because his election would be declared void. It is also mentioned though not pressed at trial that the voters were threatened with social ostracism and appeal was also made to superstitions of the voters. Other points regarding false accounts and false personations etc. have not also been pressed.

The respondent filed written statement challenging the maintainability of the petitioner's petition. He admits to have been a Minister of the State of Orissa at the time of election, but strongly denies to have used or exercised any control or influence over any Government servants who personally also were not persons of influence as contended, nor did any of them work for him through his subordinates. It is true that certain nomination papers of his were signed by Government servants as proposers or seconders; but this was out of their love and sympathy for the Congress creed and in the exercise of their right of franchise. Their signatures were never obtained with the object of using or utilising their assistance for furtherance of his prospects of election. All allegations about the working by Government servants and all allegations about threat and assault on voters and workers of the petitioner are challenged as incorrect. The allegation about promise of service to U. K. Maharaj and Sudhir Kumar Roy are denied. The use of Government Publicity Van for election propaganda is challenged as incorrect. Allegation about rowdism are also denied. He admits to have written a letter to Sadhu Charan Das for warning his nephew Duryodhan from working for the Socialist Party, he himself being supporter of the Congress; but the allegation about holding out of threats is said to be absolutely false nor could the letter have any demoralising effect as mentioned in the petition. The return of expenses according to him was not false in any material particulars. He denied to have received any posters, pamphlets etc. from the Congress Committee or any cost thereof. Cost of publication made by himself has duly been entered in the return and the cost incurred in using motor vehicle has also been shown. Expenses incurred over his workers and all outstanding dues have also been entered. No person working for the respondent in election was paid any remuneration or reward from the discretionary grant and consequently the question of showing such payment in election expenses cannot arise. The numbers of votes polled by himself and the petitioner are admitted as correct but on the grounds mentioned in the recrimination petition, the petitioner could not have been elected but rather he would have polled considerably less number of valid votes.

In an additional written statement regarding appointment of Janakinath Sahu as polling agent, it is mentioned that the said Janakinath Sahu did never act as his polling agent and that the respondent never tried to procure or attempt to procure or obtain assistance of the said Janakinath Sahu for the furtherance of his prospect of election.

Upon the allegations and counter-allegations, the following 12 issues were framed for decision:—

ISSUES

- (1) Is the petition liable to be dismissed under section 90(4) of the Representation of the People Act?
- (2) Did the respondent No. 1 commit any illegal or corrupt practices as alleged in the petition and did they materially affect the result of the election?
- (3) Did respondent No. 1 procure any assistance from the Government servants in furtherance of the prospect of his election as alleged in the petition?
- (4) Is the petitioner guilty of any illegal and corrupt practice as alleged in the petition of recrimination?
- (5) Is the election of respondent No. 1 liable to be declared to be void?

- (6) Can the whole election be declared to be void?
- (7) Is the petitioner entitled to be declared as a returned candidate?
- (8) What right, if any, the petitioner is entitled to?
- (9) Is Laxmidhar Mohapatra, the Branch Postmaster of Sirlo-Nuagan a Government servant?
- (10) Have any of these alleged Government servants done anything beyond the signing of the nomination papers?
- (11) Was any major corrupt practice or illegal practice committed in the election?
- (12) Was any minor corrupt practice committed in the election? If so, did it materially affect the results of the election?

This case was first disposed of on a preliminary legal point by judgment, dated 5th September 1953 by a previous Election Tribunal. Considering section 33(2) and section 123(8), the Tribunal was of opinion that Government servants as such could not sign as proposers or seconders of any candidate and as Government servants did sign as such in this case, the election of the respondent was void. The Tribunal also rejected the prayer of the petitioner to be declared elected considering the wide difference of votes polled by the parties. The respondent unsuccessfully moved the Hon'ble High Court against the decision and on special leave to appeal having been granted, the respondent went in appeal to the Supreme Court, which by its judgment, dated 4th February 1954 set aside the decision of the Tribunal and remanded the case to the same Tribunal for decision on facts of all the points raised in the case. Under subsequent orders of the Hon'ble Chief Justice of India, a fresh Tribunal (the present one) was reconstituted. The learned Judges held in substance that mere signing by the Government servants as proposers and seconders which was permissible under section 33(2) cannot by itself be a corrupt practice under section 123(8) both of the R.P. Act unless and until this was done as part of a plan to procure their assistance for the furtherance of the candidate's prospect in other ways than by vote.

They also in disapproving the decision of the Tribunal referred to the definition of the word 'Candidate' as given in section 79(b) of the R.P. Act and it has to be decided on facts as to when the respondent became a candidate according to law.

FINDINGS

Issue No. 1.—Section 90(4) of the R.P. Act (1951) provides for dismissal of election petition by the Tribunal for non-compliance of the provisions of sections 81, 83 or 117 of the said Act. The learned lawyer for the respondent has pressed this issue so far as non-compliance of section 83 only is concerned. Section 83(2) provides for a list of particulars duly signed and verified to accompany the election petition as provided in Clause (1) of the section. This list of particulars should set forth full particulars of any corrupt or illegal practice pleaded including "as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each of such practice." So far as the particulars of corrupt or illegal practices are concerned, we find a verbatim reproduction in the list in column 2 of the statements in the petition itself. In Columns 3 and 4, however, regarding the place and date of commission, it is vehemently contended that the particulars in the list are much too vague; because in most of them the place given is the constituency of Kasanagar and the time mentioned is whole period of election, i.e., from 9th November 1951 to 24th January 1952. The learned Advocate contends that such vague particulars cannot be sufficient in law because they leave the other side quite in dark regarding the actual place and date of commission. The contention to our mind is not without force. But a line of distinction has to be drawn between want of particulars and indefinite particulars. Mr. Das for the petitioner has in this connection referred to Clause 3 of the said section 83 wherein it is provided that the Tribunal can order better particulars to be furnished if it be necessary for the purpose of ensuring a fair and effectual trial. He has also contended that the respondent himself has not raised any objection in his written statement on this score. But on reference to some of the paras. in the written statement, e.g., 8, 13(b) and 16, we find objections taken on the ground of vagueness of particulars regarding place and time. Any way, the point to be considered at present is, apart from particular items in the list to be taken up hereafter, as to whether the petition as a whole is to be dismissed under section 94 of the Act. The learned Advocate for the respondent had to concede that the list of particulars regarding place and time

of commission is not vague or wanting concerning certain items, e.g., signing of nomination papers by Government servants named therein at Cuttack and on 9th November 1951 and 10th November 1951. Similarly item No. 4 in the list regarding D. N. Dutta, the date and place of commission of assault on Akulananda Behera and Kishori Mohan Das and of canvassing within 100 yards of the polling booth are quite specifically given. Such being the position, we are quite clearly of opinion that the petition as a whole cannot be dismissed under section 90(4) of the R.P. Act and the issue is decided accordingly.

Issues Nos. 2, 3 and 9 to 12.—These issues are conveniently taken up together as inter-mixed on facts and in law. But before entering into them, it would be desirable to lay down some salient principles which should be kept in view in deciding this case. It is well settled and recognised principle on the assessment of evidence in such cases that the evidence must be free from all reasonable doubt. If there is such a doubt, its benefit must be given, as in criminal cases, to the respondent. No suspicion, howsoever strong can replace proof. It goes beyond dispute that the standard of proof required in proving a case based on corrupt practice is the same as that in a criminal case. Besides it is sound principle of natural justice that success of a candidate who has won at the election should not be very lightly interfered with and any petition seeking such interference must strictly conform to the requirements of law. The legislature has clearly indicated this by enacting not only section 85 but also section 90(4) discussed above.

Bearing the above salutary principles of law, we now come to the facts of this case.

In Para. 4 of the petition and item No. 1 of the list of particulars, nine persons serving under Government are mentioned to have signed on some of the nomination papers Exts. 2 series as proposers or seconders of the respondent. The fact of actual signing by them has not been questioned, but it is disputed that the Chaukidari Presidents named therein come within the category of persons serving under the Government within the meaning of section 123(8). For the present, we would take up the undisputed Government servants, namely, Madhusudan Mohanty, Dayanidhi Mohanty, Debendranath Dutta, U. K. Praharaj, Sudhir Kumar Roy and Atul Chandra Roy amongst the signatories to the nomination papers.

It is now well settled by the decision of the Supreme Court in this case that signing per se by the Government servants is quite permissible under section 33(2) of the R.P. Act and it cannot tantamount to corrupt practice under section 123(8) of the said Act unless and until such signing be a part of a plan to procure their assistance for the furtherance of the candidate's prospect of election. The initial objection has been taken by Mr. Mohanty arguing for the respondent that no case of plan has been made out in the petition, but we do find mention in the petition that the signatures were obtained as 'a first step' to use and utilise the Government officers for the purpose of election. Thus we feel unable to overrule the case of a plan as foreign to the petition; but we are to see how far this plan, if any, has been substantiated on the evidence on record. This will necessitate going into the evidence regarding the manner and circumstances under which the signatures were made or obtained and the future or previous conduct, if any, of each of the Government officers concerned to decide how far they signed as part of a plan, or in other words, as first step to aid the prospect of the election of the respondent.

But, before we go into that question, it has to be decided in view of the Supreme Court's decision as to when the respondent became a candidate within the meaning of section 79(b) of the R.P. Act. It goes without saying that the existence of a fact is necessary before the question of its furtherance can come in, or in other words, the fact of the respondent having become a candidate within the definition in the said section must be established before the furtherance of his prospect of election by signing the nomination papers can be urged. The learned Advocate has cited an English case *Rex v. Tearse and others* (1945 KB 1) where the existence of strike is to be found out before there can be any action in its furtherance. According to the definition given in the section candidate means "a person who has been or claims to have been duly nominated as a candidate at any election, and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out of a prospective candidate." It has, therefore, to be seen if the respondent had at any time before the date of his nomination as a candidate began to hold himself out as a prospective candidate. If on the evidence it is found that he did not hold himself out at any time before his nomination as candidate, then clearly the act of signing by the Government servants cannot

come within the mischief of section 123(8) because at that time the respondent was not a candidate in the eye of law and as such there can hardly be any question of assistance for furtherance of candidate's prospect. But there is evidence in the case which can lead to a definite conclusion that the respondent did actually hold himself out as a prospective candidate before his nomination. P.Ws. 28 and 30 have spoken about meetings at Jasapada and Kelikadam respectively where the respondent expressed his intention to stand as a candidate from the constituency. The former gives the date of meeting as in October 1951 and the latter 3 or 4 months before the election. Jagu Pattanaik or Jogeswar Pattanaik (R.W. 26) is said to have attended both the meetings and to have promised support. But R.W. 26 himself has not denied. Besides R.W. 58 Natabar Bhuyan, the unquestioned worker of the respondent stated in cross-examination that he had been to the village of Debendranath Dutta many times before the date he obtained his signature on the nomination form for canvassing for the respondent. Thus, it is clear from his evidence also that canvassing had actually begun before the signature of D. N. Dutta on the nomination form which took place a few days before 9th November 1951 on which date Ext. 2-a was filed before the Returning Officer. Mr Mohanty characterised it as "a confused statement" by the witness, but confusion can hardly be an inference, as contended, when the witness stated in the same breath that he had never gone to the village after the date of Debendra's signature. R. W. 25 Laxmidhar Praharaj, an admitted canvasser for the respondent in the election, being his proposer and father of Umakanta Praharaj, a Government servant seconder, stated to have learnt from the respondent when he obtained the form Ext. 2 that the respondent was going to be a candidate from his constituency. Besides the evasive statements made in this connection by the respondent himself (R.W. 62) need mention here. He stated in cross-examination—"I do not know if Birabar Mohapatra proposed my name as a candidate to the Congress Committee. I applied to the Provincial Congress Committee to stand as a candidate from Kesanagar constituency, but I cannot say when I applied. I do not remember how many days before the filing of the nomination papers I was selected as a candidate by the Congress Committee. Before filing nomination paper I was selected as a candidate from the Kesanagar constituency."

On the above evidence and the above statements of the respondent himself our irresistible conclusion is that the respondent began to hold himself out as a prospective candidate from before the time of his nomination as candidate or even before the filing of the nomination papers; consequently the obtaining of signatures of the Government servants as proposers or seconders, if it was as part of a plan to obtaining or procuring or attempting to obtain or procure such assistance for the furtherance of the prospects of the candidate's election, then certainly would come within the mischief of section 123(8) of the R.P. Act.

Next, regarding the existence of such a plan, it has to be seen if the petitioner has succeeded in proving it. The petitioner P.W. 2 himself was certainly not present to say authoritatively how and under what circumstances the signatures of the Government servants were obtained. None of his witnesses has spoken about it. The respondent's witnesses including the signatories concerned except D. N. Dutta, since dead, and Raj Kishore Mohanty, said to have been won over, have come to say the manner and circumstances under which the signatures were made or obtained. The evidence of the respondent himself (R.W. 62) in substance is that Laxmidhar Praharaj R.W. 25, who also supported him, wanted a nomination form and he gave the form Ext. 2 after filling it up to column No. 5. He returned the same after signing as a proposer and one Umakanta Praharaj R.W. 20 having signed as seconder. At that time he did not know that Umakanta Praharaj was a Government servant though this fact is not mentioned in the written statement. Natabar Bhuyan R.W. 58 spoke to the respondent that some villagers wanted to set him up as a candidate. The respondent asked him to bring some nomination forms from the Congress Office. He brought and made over some forms to him (respondent). He gave out some forms after partially filling up and some blank forms to him. Natabar got them signed by proposers and seconders and returned them to him. Natabar also supports in substance this evidence. Further the respondent stated that he wanted some forms to be signed by local persons who might be readily available at the time of scrutiny. For that he gave some forms to Bholanath Mohanty R.W. 61. Some of the forms were partially filled up and some were blank. He also requested him to fill up the blanks, if any. He also gave to him the forms which Natabar had returned and which were partially filled up. R.W. 61 also substantially supports this evidence and stated that he got the forms filled up by Sudhir Kumar Roy R.W. 34 because he knew the job, having worked as a clerk in the Election Office at Kendrapara and further because he was fully known to him. The respondent further denied having requested personally any proposer or seconder to sign on

the form nor did he request Natabar or Bholanath to get the forms signed by any particular person. Laxmidhar Praharaj R.W. 25 who supported, as already said, the respondent, has said further that he intended to get the form seconded by some villager, but as he could not go to the village he got it signed by his son Umakanta Praharaj R.W. 20 who in his turn has supported the evidence that the nomination form was given to him by his father. The other Government servants signatories Madhusudan Mohanty R.W. 11, Dayanidhi Mohanty R.W. 49, Sudhir Kumar Roy R.W. 34, Atul Chandra Roy R.W. 12, Gulam Rub R.W. 13 and Natabar Biswal R.W. 9 have also been examined to deny any personal approach by the respondent for obtaining their signatures. From the evidence of Sudhir Kumar Roy, R.W. 34, it is gathered no doubt that some of the columns in most of the forms were filled up by himself and some by the respondent himself, but the suggestion to both that they met together for filling up the forms has been denied. Such being the one-sided evidence, it is difficult for us to hold as fact that the signatures of the alleged Government servants were obtained as a part of any plan or as first step to use and utilise the Government servants for the purpose of the election.

Next, it has to be seen how far the petitioner could substantiate his case of any such plan on account of the alleged subsequent conducts by the Government servants concerned. But apart from any question of the existence of a plan, if any of the Government servants named in the petition did actually work for the respondent, their alleged action to the knowledge of the respondent or his workers must constitute corrupt practice within the meaning of section 123(B) of R.P. Act. It has, therefore, to be seen if the respondent obtained or attempted to obtain the assistance of the Government servants beyond their signatures on the nomination forms and we propose to examine the evidence against every one of the alleged Government servants individually.

Madhusudan Mohanty.—He is Personal Assistant to the Director of Animal Husbandry and Veterinary Services, Orissa and is resident of village Balisukri within Kesanagar Constituency. There is no specific allegation in the petition or in the list of particulars about any personal canvassing by him for the respondent. All that is alleged in item No. 2 of the list is that there are two stock-men working in his department and in the constituency, that almost all the agriculturists and farmers are naturally concerned with these stock-men and that these stock-men were giving out to the public that their P.A. was a supporter of the respondent. Consequently it is alleged that the voters were highly influenced. Such being the case in the petition, the petitioner and his witness have come to speak about personal canvassing by Madhusudan Mohanty. The petitioner P.W. 2 himself states to have seen him moving with the respondent three or four times in the constituency. They were propagating for the progeny show and canvassed also. He stated to have complained about Madhusudan Mohanty to the Governor of Orissa, the Chief Minister and the Election Commission. His letters, dated 10th December 1951 to the Governor Ext. 1-b with the endorsement thereon Ext. C, his letters, dated 3rd December 1951 Ext. 1-c and 11th January 1952 Ext. 1-a both to the Chief Minister besides his letter, dated 3rd December 1951 Ext. 1-d to the Election Commission are on record. In none of them there is any mention about the personal canvassing by Madhusudan Mohanty who has been named simply among those having proposed or seconded the nomination papers of the respondent. To the Governor he also complained against progeny show which ultimately was stopped as is the evidence. In face of all these letters as well as the case of the petitioner in his petition, the evidence at the time of trial about personal canvassing by Madhusudan Mohanty can hardly stand. Moreover the list of particulars as already discussed is silent regarding the place and date of canvassing. At the time of hearing, however, the petitioner goes forward to say that he saw him requesting voters on two days in the *Hat* and also in the night previous to the polling in village Balisukri. He first saw him requesting on 7th or 8th December 1951 and again after two *Hat* days. *Hat* is held on every Monday and Friday at Kesanagar. However Mr. Das could urge that particular place and days of canvassing were not possible to give in the list of particulars, he could have no explanation so far as the evidence of the petitioner himself is concerned. If the petitioner knew as is his evidence the place and days of canvassing by these Government servants, he should have disclosed the same at least in the list of particulars; otherwise his evidence on the point has to be looked to as subsequent development. At one place the petitioner denied also to have seen him doing propaganda work when visiting stock-men centre. The other witnesses who come to speak on the point of personal canvassing can also stand in no better position for the above reason. P.W. 8 Indramani Bisoi stated to have met him in the *Hat* at Kesanagar where he informed him as having set up the respondent. In view of this observation, we have carefully examined the contentions of the

in the *Hat* and the respondent was with him. This witness is retired Sub-Inspector of Police of Mayurbhanj Estate. Debendra, a polling agent of the petitioner is son of his agnate Upendranath Bisoi. Besides Hemendranath Bisoi P.W. 23, a worker and polling agent of the petitioner (according to P.W. 37) is his distant relation. On this account he cannot also be relied upon as an independent witness. P.W. 10 Dadhi Naik, a co-villager of Madhusudan also stated about having heard and seen Madhusudan Babu canvassing two or three times on the village road in front of his house. In cross-examination he stated that he did not say to any one that Madhu Babu or others named in his examination-in-chief, had canvassed. If this were so, it cannot stand to reason how he could be cited as witness on the point. P.W. 11 Punananda Bhoi states to have gone to the stock-men Centre at Kesanagar for the treatment of his heifer. At that time Madhu Babu is said to have gone in a car and requested him to vote for the respondent and not for the petitioner. Five or six persons were present at that time but none has been examined to corroborate. Besides he did not know Madhu Babu from before that date and he could know his name only on enquiry from his relation Jogi Bhoi who also is not a witness. He could not recognise Madhu Babu even at the time of evidence. Hence, his evidence is much too shaky about Madhu Babu. Besides the fact of his having gone to the stock-men Centre itself stands open to doubt on a reference to the register of the place Ext. 5 and Ext. 5-a wherein his name does not find mention. Ram Chandra Patra R.W. 44, one of the stock-men has been examined to deny canvassing either by himself or by Madhusudan Mohanty and according to him he never went to the Centre during the election period. He contradicted no doubt M. S. Mohanty R.W. 11 when he stated that he never went to the constituency during the election period although there was grass growing scheme at Kesanagar. The witness stated that Madhu Babu did go to inspect the scheme at times when the scheme was in full swing for about 2½ months before the date of polling. Ext. 16-a rent receipt, dated 29th December 1951 granted by Madhu Babu is brought on record to contend that he must have gone to the village but the evidence of Madhu Babu R.W. 11 himself cannot lead to any such inference. P.W. 12 Jadumani Behera of Bhoipada about a mile away from Balisukri has also stated about canvassing by Madhusudan Mohanty. He is a Tahesildar of Jadumani Acharya who is alleged to be worker of the petitioner. He was an accused in a case under section 420 I.P.C. though he stated to have been acquitted. P.W. 14 Hari Rout of Balisukri speaks of canvassing by Madhu Babu three or four times but he does not corroborate the petitioner regarding any of the dates. P.W. 23 Hemendranath Bisoi has also spoken about the canvassing in the *Hat*, but, he as already mentioned, is an interested witness. Similarly P.W. 37 Debendranath Bisoi, polling agent of the petitioner cannot safely be relied upon on the points of canvassing by Madhusudan Mohanty. Besides being polling agent this witness is teacher in the village Middle English School of which the petitioner is the Secretary.

On the side of the respondent, there is complete denial about any canvassing by him either personally or through his stock-men. Leave applications Exts. F to F-2, dated 5th November 1951, 29th November 1951 and 19th January 1952 and Exts. F-3 to F-5 note sheet of the days granting leave are, however, not helpful on the point in consideration. They simply show that Madhusudan Mohanty took leave on the ground of illness and once for casting his vote. R.W. 11 Madhusudan Mohanty himself is examined and he denied having worked or canvassed for the respondent. He was all along living with his family at Cuttack which is outside the constituency. He is a touring officer and there are two vans in his department. Ext. G is entry, dated 10th December 1951 in the log-book to show that the department van besides other places, viz., Sri Mohapatra's house, hospital and Director's house went to Kesanagar and back. But this cannot lead to any conclusion on the point under consideration because progeny show was being organised at the time till ultimately it was stopped.

Besides there are other witnesses examined on the side of the respondent to deny any canvassing by him; but it is needless to dilate on their evidence when the petitioner, as already mentioned, has failed to prove his case of canvassing either by Madhusudan Mohanty himself or by his stock-men. There is neither any evidence that the stock-men canvassed, if at all, to the knowledge or connivance of the respondent or his worker.

Davanidhi Mohanty.—He also is resident of Balisukri and is an assistant in the Secretariat, Home Department. Regarding him also the petition and the list of particulars attached do not make any clear mention of canvassing, but he is stated to be a person of influence and that he having availed of Sundays and holidays during the election, used to exercise the said influence in favour of the respondent. Columns 3 and 4 of the list regarding place and date are too indefinite because certainly influence could not have been exercised throughout

the constituency and during the whole of election period. The list of particulars, therefore, is much too vague not only regarding the date and place but also about the manner of the commission of corrupt practice, i.e., exercising of influence. The evidence of the petitioner P.W. 2 himself is that he did propaganda in his village and in the neighbouring villages where he used to go generally on Saturday evening and return to Cuttack on Monday morning. The places of his propaganda given are said to be at Balisukri, Biswalpada, Bhoipada, Samantrapur, Kesanagar and Holipur. But it cannot stand to reason that the petitioner having known the places of propaganda would keep his petition vague and indefinite much to the disadvantage of his adversary, besides his name also like Madhusudan Mohanty, is mentioned in the letters Exts. 1-c and 1-d complaining of signing of nomination papers, but there is absolutely no mention of canvassing by him. He is said to be a man of influence whereas in the written statement he has been described as meek sort of man. There is no evidence on the point of influence and moreover of its exercise. He himself has been examined as R.W. 49 and from his evidence we can only say that he deposed as a straight-forward man. He unlike Madhusudan admits to have gone home on leave from 23rd December 1951 to 27th December 1951 but denies to have gone home at any other time during the election period. He also admits that his cousin Gunanidhi Mohanty was orderly of the respondent. R.W. 50, a fellow assistant has been examined to support that he worked on Sundays and holidays also. In corroboration Ext. W, a note sheet, dated 8th April 1953 by one Mr. Samuel to the Secretary is brought on record. In this Dayanidhi has been recommended for promotion to upper division for his hard work and also for working on holidays and Sundays. But much cannot be made of this document of subsequent date and specially when Mr. Samuel himself has not been examined. However the petitioner is to stand or fall on the strength or otherwise of his own case or evidence. It is already mentioned that his case in the petition is much too vague for any serious consideration. His other witnesses P.Ws. 10, 12, 14 and 23 who have come to support on the point of canvassing need no serious consideration because the merit of their evidence has already been discussed and found open to doubt concerning Madhusudan Mohanty. The only other witness P.W. 15 of Bhoipada does not also appear to be credible. He is himself a Harijan and Harijans of his village voted for the respondent; but it is strange that he has come to the witness box to support the petitioner. To our mind, the oral evidence on the side of the petitioner on the point of actual canvassing by this Government servant is unworthy of credit.

Debendranath Dutta.—He was a Civil Court peon at Cuttack. He died as appears from his service book Ext. L on 16th October 1952 and consequently his evidence could not be had. He signed as proposer. So far as this Government servant is concerned, besides the general allegation of his being a whole time worker for the respondent there are definitely instances of action with date and place. He has also been named as one of the rowdies in Para. 10 of the petition. The specific instances mentioned against him are:—(1) He obstructed Akulananda Behera, a Socialist worker from carrying on propaganda in favour of the petitioner on 21st January 1952 at Barada. He threatened Behera with assault and is said to have forcibly snatched away a 'Chunga' (a tin funnel used as loud speaker) from Mr. Behera. (2) On 13th January 1952, place is not given, he seriously assaulted Kishori Mohan Das Supporter of the petitioner and as a result of the same Kishori became unconscious and was bed-ridden for a week. (3) He was found canvassing within 100 yards of the polling booth at Kesanagar P.S. on 22nd January 1952 and attention of the Presiding Officer being drawn, he was made to leave the place.

It has gone beyond dispute that he was on leave for the entire period of election. According to the petitioner he worked for the respondent during the time, but according to the respondent he was ill and incapable of working. Ext. K and Ext. K-1, the leave applications besides the service book Ext. L show that he was on leave from 1st April 1951 to 16th August 1952 or rather up to his death. The Civil Court Nazir R.W. 19 who has been examined to prove these documents could not say if he was actually ill. Now, the evidence on the point of illness is very conflicting and unconvincing. According to R.W. 23, he was suffering from colic pain, according to R.W. 5, he was suffering from malarial fever and pain in stomach while according to R.W. 35 who is his agnate and a pensioner, he was suffering from heart-trouble for which he had given him 'Digitals' of Homeopathy. Besides Ext. 26 is the order sheet of a criminal case under section 7 of the Act 24/46 (Black-marketing). It is found from this that he was present in Court at Cuttack amongst other dates, on 8th November 1951, 23rd November 1951, 24th November 1951 and 7th December 1951, during

the period of election. This documentary evidence coupled with the unsatisfactory oral evidence mentioned above disprove the respondent's case of illness during the election period, i.e., from November to 24th January 1952.

However, coming now to the general allegation of work against him, we must mention that the petition and the list of particulars suffer with vagueness regarding the manner, place and date of working. P.W. 2 stated to have seen him doing propaganda 10 to 15 times from November 1951 to January 1952. But in spite of such long-drawn propaganda he did not inform the District Judge about it. The places and the alleged propaganda have not been disclosed. P.Ws. 12, 23 and 37 have spoken on the point of canvassing besides they have also said about threat and flag trampling on 10th January 1952 at Kesanagar while going in procession. The petitioner himself has not said anything in chief about flag nor has this point been taken in the petition. The evidence of P.W. 12 and P.W. 23 cannot appeal for the reasons already given above. P.W. 37, as already mentioned, is a polling agent of the petitioner. He has also spoken about canvassing within 100 yards which will be discussed hereafter. Therefore, the evidence regarding his having actually done propaganda apart from signing on the nomination form has not been convincingly proved.

Regarding Barda incident, i.e., obstruction and threat to Akulananda Behera, there is one Station Diary entry Ext-4-c proved by A.S.I.P.W.3 who is certainly an unconcerned man. He has simply proved the handwriting. This station Diary entry is, however, somewhat belated. It was recorded at noon on 22-1-1952, i.e., a day after the incident although the Socialist Camp of workers according to the complaint Akulananda P.W. 33 was only 1/4 mile from the Police Station. An explanation, however, is found on his evidence that after the incident at about 4 p.m. in the afternoon he went to canvass in other villages till he returned late in the night and sent the complaint next morning at about 7 a.m. Apart from the delay the incident might have taken place, but the whole point for consideration is as to whether Debendranath had actually participated as alleged. Akulananda himself did not know him from before and he states to have learnt his name from the villagers none of whom he could name. The only other witness examined on the point is P.W. 26 of Pankasai. He was once a teacher under Akulananda who was then the Vice Chairman of the Local Board. He states to have gone to purchase cloth in the Control shop run by Debendra in his house. At that very time Debendra was informed about the arrival of the Socialist Worker and Debendra having closed his shop ran to the place. The witness also accompanied him. But the version of this witness becomes open to doubt on two grounds:—firstly because Akulananda having fully known him did not speak about his presence and secondly had he been present Akulananda must have known the name of Debendra from him. From the evidence of Akulananda the only worker of the petitioner present at the time was Hemendra Bisoi P.W. 23 who, however, does not speak anything of the incident. Mr. Das Advocate for the petitioner conceded that this was an omission, but this if at all could go to the advantage of the other side and not to the petitioner himself. Again according to P.W. 26 respondent's main worker Natabar Bhuyan was present there. But curiously enough his name does not find mention in the Station Diary Ext. 4-c. From P.W. 26 it is gathered that there were present independent villagers who forbade the quarrel but none has been examined to say that Debendra had actually taken part as alleged. R.W. 35 and R.W. 36 both of Barda have denied the incident though they cannot be regarded as independent men. Any way, on the evidence, as discussed, the petitioner in our opinion has failed to prove that Debendra had actually taken part in the alleged incident.

Another particular incident ascribed to him, is assault on Kishori Mohan Das, worker of the petitioner, on 13-1-1952 in Raghunathpur meeting where the respondent is said to have presided. It is said that while the respondent was speaking Kishori interrogated as to whether he had gone there as a candidate or as a Minister. Thereafter there was uproar of 'Sit down', 'Sit down' and Kishori was assaulted before he could sit. The respondent R.W. 62 denied any such incident at the meeting. His worker Natabar Bhuyan P.W. 58, who also is said to have joined in the assault has denied. Kishori himself has not been examined but his father P.W. 34 has come unsummoned to depose. Besides his testimony there are two other witnesses Nos. 18 and 38. Before we come to their evidence, it is noticeable that neither the doctor has been examined nor is the dispensary register brought on record. The case is that Kishori was unconscious and was bed-ridden for about a week, but curiously enough no injury report was taken nor was any complaint to the Police made. According to the evidence of the father although Kishori was unable to walk or sit after the assault, yet he was conscious. On the next date at about 10 a.m. he was brought back home on the back carrier of his cycle. This statement by his father

refutes the case in the petition that he was unconscious and bed-ridden for a week. P.W. 18, a worker of the petitioner and then a student, to falsify whom the respondent has examined R.W. 32, a clerk of the Ravenshaw College, Cuttack who deposed that he was not a student of the college at that time, stated that Kishori was assaulted and thrown in a ditch at a distance of 10 cubits only. P.W. 34 gives 40 cubits. Again according to him relation of Kishori including his father came to the hospital where he had been taken by the witness with others. P.W. 38 stated unlike P.W. 18 that Kishori Mohan was pushed by some persons and was beaten and thrown in a drain nearby. According to him, Kishori's father, whose name curiously he does not know although a co-villagers, with himself picked Kishori up from the drain and carried to the hospital. Moreover this witness does not name Debendra as an assistant and the evidence of the only other witness P.W. 18 on the point is simply hearsay because he did not know Debendra from before and he came to know his name by enquiry. His father P.W. 34 admittedly was not an eye witness to the incident. Consequently there is no evidence of Debendra of having actually taken part in assault if at all.

Next regarding the other incident of Debendra, canvassing within 100 yards of the polling booth, the evidence is none-the-less unconvincing. In the petition it is said that he was canvassing on 22-1-1952 and a complaint was made to the Presiding Officer. Ext. 1-F is said to be an office copy of the complaint to the Presiding Officer. But this could not be used as substantive evidence in face of the evidence of the Returning Officer R.W. 29 and Assistant Returning Officer R.W. 30 that no such petition was received in their office from the Presiding Officer, who however is not examined by the petitioner to support. It is difficult for us to accept the contention that the complaint petition has been suppressed. According to rules, if any such petition is filed, the Presiding Officer must send the same to the office of the Returning Officer. Now, to come to the evidence of P.W. 37, who stated to have made the complaint, we find that the date of canvassing was 24th January 1952 which is neither supported by the statement in the petition nor by the office copy of the alleged complaint petition, Ext. 1-F. Besides in the petition, it is said that action was taken by the Presiding Officer and Debendra was made to leave the place but this witness stated that the Presiding Officer did not hold any enquiry on his objection. Hemendranath Bisoi P.W. 23 was the other polling agent of the petitioner in the booth, but he has not spoken anything about the incident. In the circumstances, it is difficult for us to accept the evidence of the solitary interested witness, P.W. 37. Although the petitioner has spoken on all these three instances narrated above, he clearly admitted that he himself was not present and consequently his evidence can be regarded as mere hearsay. To summarise the evidence, therefore, we find that none of the allegations either general or particular has been proved beyond doubt against Debendranath Dutta.

Umakanta Praharaj.—In para 5-d of the petition and item No. 5 of the list there is no clear allegation about canvassing by him; it is only mentioned therein that he and his father were men of influence. His father L.D. Praharaj became proposer and he himself became seconder. Their support was obtained on promise of service which was given to Umakanta in the Motor Transport Department of which the respondent was then the Minister in charge. The manner of support has not been disclosed except by way of signing the nomination form. The place and date of commission apart from manner are also vague as against Government servants mentioned above. Nothing is said about exercise of influence if any.

To come now to the evidence, P.W. 2, the petitioner stated that he did propaganda and he actually saw him doing propaganda at villages Goali and Radhanagar, at the latter place on 24th November, 1951 or 25th November, 1951 and these evidence in detail regarding place and date remain open to doubt as subsequent development. Besides the petitioner further stated that he had seen him talking to 10 to 15 persons at Radhanagar and 20 to 25 persons at Goali but could not say what talks were going on. P.W. 27 of Radhanagar supported him by saying that he was requested by U.K. Praharaj to vote for the respondent. According to R.W. 48 this witness was a canvasser of the petitioner, but no suggestion, however, was made to him. But his evidence becomes doubtful when he said and the petitioner or his workers did not canvass to any one in village. The petitioner had gone there and the witness appears to be much too interested to admit of even canvassing by him or his workers. The only other witness is P.W. 31 of Goali. According to him, Umakanta canvassed 2 days before 'Kumar Purnima' which corresponds to 15th October 1951. This cannot be true because the election period according to the petitioner was from November 1951 to 24th January 1952 and as such canvassing on or about 13th October 1951 cannot be accepted.

Hence, the evidence as also the allegation in the petition, is not up to the mark. There are certain circumstances against this man no doubt; but mere circumstance cannot lead to any sure inference against him. Umakanta himself has been examined as R.W. 25. He was admittedly then working in the Rehabilitation Department. According to R.W. 33 he was relieved on 30th November 1951. Umakanta states to have got the appointment letter at Keonjhar where he had joined on 12th December 1951. His evidence is that having relieved he went to Keonjhar on 1st December 1951 probably in expectation of the appointment order. But he having given his Cuttack address in his application for the post, it appears a mystery how he could hope the appointment letter at Keonjhar and it again cannot stand to reason that he would be there from 12 days before. He, however, has denied the allegation that during the period he was doing propaganda in the constituency. This man was on casual leave on 15th November 1951 and again from 19th November 1951 to 21st November 1951 (*Vide* Exts. O and P), but it is said that there was no permission to leave station. According to Umakanta himself, his house is at Tirtolo which is only two hours cycle journey from Cuttack. The father L. D. PraharaJ admits to have canvassed for the respondent but he denied canvassing by his son. These evidence and circumstances alone cannot however build up a case which is neither set up in the petition nor proved in evidence against him.

Sudhir Kumar Roy.—He is District Savings Organiser at Cuttack being resident of Kesanagar. He signed the nomination paper Ext. 2-b as seconder besides he filled up some columns of other nomination forms at the instance of his acquaintance Bholanath Mohanty. The allegation in Para 6(a) of the petition and item No. 6 of the list of particulars is that he was procured to openly support the candidature of the respondent by being a seconder in one of the nomination papers. He is also a person of influence in the locality and as a reward for his open support he was promised service in the Transport Department of the State for his brother Sunil Kumar Roy who became a seconder in one of the nomination papers. Sunil Kumar Roy had got an appointment in the Motor Transport Department during the election and he joined his post after completing the election campaign. Place and date of commission in columns 3 and 4 as usual are in the Kesanagar constituency and during the whole period of election.

On the scrutiny of the above allegations there is no clear mention about any personal canvassing by this Government servant. It is not said as to how he exercised his alleged influence in favour of the respondent. In evidence, however, the petitioner P.W. 2 stated that he actively worked for the respondent and used to move out with National Savings Service Organisation Van (no such case of use of van in the petition) and is said to have done propaganda for the respondent. In cross-examination, however, he admitted that Sudhir Kumar Roy was a touring officer and stated further that he had seen him twice in the constituency with respondent No. 1 once 2 or 3 days after the scrutiny on 14th November 1951 and again 8 or 10 days before the polls on 24th January 1952. He conceded at one time that while they were going in the van "they did not do anything" but subsequently he contradicted himself by saying that on both the occasions he had seen S. K. Roy doing his departmental work with the help of the Van and each time he did propaganda also. The petitioner in his letters to the Governor, the Chief Minister, and the Election Commission Ext. 1 series has mentioned no doubt his name amongst the proposers or seconders; but he never mentioned about his propaganda or mis-use of the Government Van. P.W. 12 stated to have seen him canvassing in the *Hat* many times but this witness having spoken on almost all the points has not been believed for the reasons previously recorded. P.W. 13 saw him canvassing in the *Hat* and he further stated that Sudhir had requested him also to vote for the respondent. P.W. 23 also spoke about the canvassing in the latter part of the December to January. He is worker of the petitioner and an interested witness. P.W. 37 states to have seen him working for the respondent, canvassing in the *Hat* in Kesanagar village and in his own village Samantarapur, but P.Ws. 13 and 23 although residents of Samantarapur do not speak about canvassing in their own village. This witness also was a polling agent of the petitioner and has not been relied upon previously. This is all the evidence on the side of the petitioner.

Besides other witness to deny working and canvassing by this man R.W. 31 Mr. S. Mukherjee is his departmental head, being Regional National Savings Organiser. He has proved his tour diaries Exts. M to M-2 and T.A. bills Exts. N to N-2 for the months of November to January. Similarly T.A. bills of the Motor Van driver has been marked Exts. N-3 and N-4. His evidence is that the van cannot go out of the garage without his permission and that S. K. Roy was never deputed during the election period to the Kesanagar constituency. There was no complaint against him except a report from the Local Government that he was

involved in election matters as proposer of a candidate and on which he states to have called for an explanation. His attention in cross-examination was drawn to certain entries dated 23rd November 1951 and 27th November 1951 in the log book marked Ext. Q series but nothing tangible could come out. R.W. 34 Sudhir Kumar Roy himself denied working and canvassing and has also denied any promise of service to his brother. He states to have married a Brahmin clerk working in his office and this has caused discredit to him in the society. On account of this marriage, it is said, that he does not usually go to his village and consequently he could have had no influence there. He had first stated that he had not gone to Raghunathpur during the election period but when confronted with his diary Ext. N he admitted his mistake and stated that he had gone there on 9th November 1951. He also admitted that his brother got appointment in the Transport Department then in charge of the respondent before the election, but joined after the election as his father was ill. This circumstance may cast some inference in favour of the allegation by the petitioner; but certainly by itself it cannot prove the actual working by the man or promise of service for the same. It cannot be lost sight of that the man was known to the respondent from before being resident of the same village and as a matter of fact loans from Grow More Food Department where he was Kanungo, were advanced not only to the respondent but to the petitioner also. In such circumstances, the mere fact of service to Sunil Kumar Roy cannot necessarily lead to inference about his working.

Next, it has vehemently been contended on the side of the petitioner that Sudhir Kumar Roy having admittedly filled up nomination form, it constituted clearly an assistance for the furtherance of the prospect of the candidate's election because had the nomination forms been not accepted the respondent would have lost his chance of election. Therefore, this was corrupt practice within the mischief of Section 123(8) of the R.P. Act. The contention is certainly not without force; but this was never the case made out in the relation and consequently the respondent could have had no say on it. It is admitted fact now on the part of Sudhir Kumar Roy that he filled up the columns of most of the nomination papers. But on the principles laid down by the Supreme Court in this very case, it has to be seen if this action constituted a part of the plan of assistance for the furtherance of the prospect of the candidate's election, because without existence of any such plan or *mala fide* intention the respondent cannot be ascribed to have committed any corrupt practice within the eye of law. The evidence, as already mentioned, is that the respondent had asked his man Bholanath Mohanty R.W.61 to get the forms filled up by some one. Bholanath Mohanty R.W.61 has stated reasons how he had approached Sudhir Kumar Roy for the job. He being closely acquainted with S. K. Roy who had the knowledge on the point, having worked previously in the department got the work done by him. The respondent denies to have suggested his name or to have sat together for filling the forms. Under such circumstances there can hardly be ascribed any evil motive on the part of the respondent when as a matter of fact Sudhir Kumar Roy, may be quite innocently at the request of his acquaintances, filled up some columns of the forms. The act of filling up the forms *per se* can hardly constitute an offence within the mischief of the said section.

Atul Chandra Roy.—He was a postmaster of the Orissa Secretariat and he signed a nomination forms of the respondent as proposer. In Para 6(b) and item No. 7 of the list of particulars he said to have done his very best to help the respondent in the election campaign. There is no mention specifically of the manner in which the help was rendered. The place and date of the alleged help are vague in columns 3 and 4 of the list of particulars. The petitioner in his evidence stated that this man had requested Jairam Bisoi, Debendranath Bisoi, Jadunandan Behera and others to vote for the respondents as he had set him up as a candidate. Out of them D. N. Bisoi and Jadumani Behera have been examined but they do not speak anything about this man. There being thus no evidence practically and the allegation also being much too vague, there can hardly stand any case against this man and as a matter of fact the learned Advocate for the petitioner expressed at the time of argument, that he would not press his case against him.

Now, before going to the alleged assistance by the disputed Government servants, i.e., President and others, we would take up the case against the District Public Relation Officer, Cuttack. Mr. Prafulla Kumar Patra (R.W. 24). This man has not been specifically named in the petition, but in Para 9 of the same and in item No. 12 of the list of particulars he being then the District Public Relation Officer, Cuttack, is said to have moved in the Publicity Van in the constituency for several days, attended the election meetings of the respondent and carried on propaganda for him. The Publicity Van was used to organise the election meetings and the loud speaker was used for the purpose of propaganda. These are said to

have been committed in Kesangar constituency and during the period of election and on 13th January 1952. The petitioner stated in his examination-in-chief that the officer went many times with the Publicity Van and had propagated in the constituency in the meeting at Raghunathpur, which took place on 13th January 1952. His worker protested to him. Respondent himself used the van many times and Government booklets got reprinted by him were also distributed by using the van. He stated further to have written letter to the Election Commission by giving number of the van used. No such letter, however, is to be found on the record and in cross-examination the petitioner had to concede that his evidence more or less was hearsay. He himself did not attend the meeting and he states to have reported to the Election Commission after hearing from his worker Debi Prasanna Patnaik P.W. 13. Hence his evidence being hearsay is not of much evidentiary value. P.W. 1 the M.A. student about whom we have already spoken, stated that the Publicity Van played some records before the meeting on 13th January 1952. He asked Mr. Patra on the van to go away as that was an election meeting, but he paid no heed. According to him, the officer with the van was there between 4-30 or 5 P.M. and he left after about an hour. The only other witness on the point P.W. 38 contradicted him by saying that the van went back one or 1½ hours before the meeting which according to him, was held at about 4 P.M. as soon as the respondent reached there. In spite of this conflicting evidence on the side of the petitioner Mr. P. K. Patra (R.W.24), since retired from service, admitted to have gone to Raghunathpur on the date. Some records were also played and he distributed some pamphlets, namely, 'Barabular Tippakhata' and some charts of the polling booth explaining how to give vote correctly. He also sold some copies of 'Utkal Prasanga' there. All these, according to him, were Government publications. He did not know before reaching Raghunathpur that a Congress meeting was to be held there on that date and he stated to have changed his programme and left the place when he came to know of it on protest by some young man (may be P.W.18). His evidence appears to be frank. It has been contended that he had no business to distribute 'Barabular Tippakhata' which according to the petitioner was got reprinted by the respondent. P.W.6, an assistant of the Public Relation Department stated that Government got printed the pamphlet 'Barabular Tippakhata' in Jyoti Press and got the same distributed by post. According to him, the District Public Relation Officer (Mr. Patra) was not to distribute the pamphlet but R.W.42 Head Assistant of the department proved pamphlet 'Barabular Tippakhata' Ext. 8-c to 8-e which according to him were printed and distributed by the department. He has proved order Ext. T in which the copy-right of 'Barabular Tippakhata' was made free. As a matter of fact, the respondent did get reprinted these pamphlets at his own cost as is the evidence of the Manager of the Press P.W. 19, but there is no evidence on record that his reprinted copies were being actually distributed by Mr. Patra. The only evidence of the petitioner on the point is— "At the time of distribution I did not know whether the pamphlets were printed by the Government or by the respondent No. 1. But after seeing the election expenses of respondent No. 1, I came to know that he got 30,000 such pamphlets printed and so I now say that those pamphlets which were distributed were reprinted pamphlets." Hence, his evidence is based merely on inference and guess which cannot be accepted in the face of clear statement of Mr. Patra that they were Government publications and definite denial by the respondent R.W. 62. R.W. 21 on the side of the respondent stated that the Van went to the place at about 3 P.M. Some records were played and pamphlets containing instructions were distributed. According to him, the van left the place after about 5 minutes only. Another witness R.W. 53 of the department has proved Ext. S-1 in the handwriting of the operator in the District Public Relation Office. It is taken from him in cross-examination that the entry dated 13th January, 1952 did not show that the van had gone to Raghunathpur on that date. But much cannot be made out of it because for the evidence of Mr. Patra as also from the statements of petitioner's witnesses, on this point mentioned above, it is pretty clear that the van with Mr. Patra left Raghunathpur which fell merely on way to Jagatsinghpur via Joypur. Besides Mr. Patra stated to have brought his tour diary and tour programme with himself and it cannot now be urged that there was any foul attempt at concealment in the log book.

We now take up the case against the choudidari presidents, both signatories to nomination forms and one non-signatory. The point of these presidents being persons serving under the Government or not has been very thoroughly mooted before us by the learned lawyers on both sides.

The question is whether presidents of choudidari Unions come within Sub-section (8) of Section 123. The Sub-section refers to persons—"serving under the Government of India or the Government of any State." It is not contended by the petitioner that they come within the language of the Sub-section itself.

But then there is an explanation to Section 123(8) which consists of two clauses of which we are concerned with Clause (b) which may here be quoted:—

“Explanation—For the purpose of this clause—

(a) * * *

(b) A person serving under the Government of any State shall include a patwari, chaukidar, dafadar, zaildar, shanbagh, karnam, talati, talari, patil, village munsif, village headman or any other village officer, by whatever name he is called, employed in that State, whether the office he holds is a whole-time office or not, but shall not include any person (other than any such village officer as aforesaid) who has been declared by the State Government to be a person to whom the provisions of this clause shall not apply.”

The limited question, therefore, is whether clause (b) of the explanation covers the case. This question was decided in the affirmative by a Tribunal of which one of us was a member in *Jaduman Mangaraj vs. Dinabandhu Sahu* (Orissa Gazette Extraordinary No. 98, dated the 17th May, 1954). The case went up to the Supreme Court and the point was raised but not decided. Their Lordships, however, observed as follows:—

“With reference to the last of the findings, it is possible to urge with some force that Extra Departmental Agents and Presidents of Chaukidari Unions are not, having regard to their functions, Government servants”

(See A.I.R. 1954 S.C.411 at page 413).

In view of this observation, we have carefully examined the contentions of the learned Counsel for both the parties, but see no reason to depart from the conclusion arrived at in the case referred to. Being in agreement with reasoning given by the Tribunal in the case referred to, we indicate briefly the reasons for our conclusions.

In our opinion, the President of a Chaukidari Union is clearly a village officer. The words ‘village officer’ have not been defined in the Act. An officer means—

“one who holds an office; a person lawfully invested with an office, whether civil, military or ecclesiastical and whether under the state or a private corporation” (Webster’s New International Dictionary).

An office means—

“settled duty or employment; a position imposing certain duties or giving a right to exercise an employment; business; service.” (Chamber’s Dictionary). “A special duty, trust, charge or position conferred by an exercise of governmental authority and for a public purpose; a position of trust or authority conferred by an act of governmental power; a right to exercise a public function or employment and receive the emoluments (if any). In its fullest sense an office embraces the elements of tenure, duration, duties, and emoluments, but the element of emoluments is not essential to the existence of an office.” (Webster’s New International Dictionary).

A glance at the Chaukidari Manual (under the Bengal Village Chaukidari Act VI of 1870) would show that the authority functions and duties of the Presidents of the Chaukidari Unions constitute an office in relation to village administration. Under Rule 129 of the Chaukidari Manual, the President is appointed by the District Magistrate by a sanad. Under paragraph 2 of the sanad he is invested with the powers of a magistrate under sections 64, 127 and 128 of the Cr. P. C. Under paragraph 3 he is appointed a village headman in all the villages comprised in the Union for the purpose of section 45(3) Cr. P. C. Under paragraph 4 he is vested with the powers of a magistrate in relation to certain enquiries. As a member of the Panchayat his duties are set out in rule 45 clauses (a) to (k). He exercises certain magisterial powers—powers of making arrest, of ordering an unlawful assembly to disperse, of granting bail etc. (rules 132 and 133). Various other public functions enumerated in the Chaukidari Manual need not be referred to. It is perfectly clear that he holds an office and is a village officer.

Indeed, we do not understand Mr. Mohanty for the respondent to contend that he is not a village officer. But his contention is that clause (b) of the Explanation does not apply to all village officers but to the enumerated persons and such other

village officers as are in the service of the Government. The argument advanced is as follows:—Sub-section (8) refers to persons serving under the Government, that is to say, whole-time Government servants. Since the sub-section itself would not bring within its prohibition part-time Government servants, an explanation was necessary and that is why clause (b) has been enacted to include part-time Government servants also. Secondly, the object of clause (b) of the Explanation was also to specifically mention certain government servants like patwaris, chaukidars etc., whose conditions of service vary in different parts of India and about whose status there may have been some doubt. It is said that since this enumeration must necessarily be incomplete, the words 'any other officer' have been added. But such village officer must fulfil the essential condition, namely, that he must be 'employed in that state', Mr. Mohanty further points out that Clause (b) commences with the words 'A person serving under the Government of any State'. It is argued, therefore, that apart from the persons enumerated a village officer in order to come under the Explanation must also be of similar status, namely, a person in the service of the State.

As to the role of a statutory Explanation, there was considerable discussion at the bar. An explanation may be enacted for various purposes. An undefined expression in the substantive provision may have to be explained by an Explanation in which case it is really a definition; or as an Explanation may be designed to completely change and give an artificial meaning to an expression in the substantive clause as in Article 286(1) (a) of the Constitution, in which case it is a fiction [See *State of Bombay vs. United Motors (India) Ltd.*, 1953 S.C. 252]; or an Explanation may restrict the meaning of an expression and exclude from its scope certain things or objects in which case it is really an exception or an Explanation may bring within the scope of the expression certain things or objects which would otherwise have been outside its scope in which case it is an enlargement of the meaning of the expression.

What is the intended role of this particular Explanation? The first part, that is, clause (a) is really a conditional exception. It explains nothing. It merely provides for restriction of the scope of sub-section (8). That is to say, having referred to government servants in sub-section (8) the legislature in this clause empowers the Central Government to exempt or exclude such government servants as they like. The second part, that is, clause (b) enlarges the scope of sub-section (8). It says that a person serving under the Government of any State shall include the categories mentioned. We must assume that there was necessity for this Explanation and the necessity would not have been there if those persons enumerated in Clause (b) would answer the description of government servants. Mr. Mohanty concedes that an Explanation may enlarge the meaning of the section, but he says that that is not the case here. In other words, he contends that sub-section (8) having mentioned government servants and not having explained who they are, clause (b) proceeds to explain the meaning of government servants. If that was the real object, it is somewhat odd that so far as the persons serving under the Government of India are concerned, no attempt to explain the term is made, clause (b) being confined to persons serving under the Government of any State. It is noticeable that clause (b) says that a person serving under the Government of any State shall include certain categories. If the inclusion of certain categories is effected by means of an Explanation to a statutory provision, it is to be assumed that but for the Explanation they would have been excluded. If the persons mentioned in Clause (b) are Government servants irrespective of clause (b), it seems to us that the Explanation is wholly unnecessary.

We have difficulty in discerning the logical conclusion of Mr. Mohanty's contention. If the meaning of the expression "person serving under the Government" in relation to village officers is to be ascertained independently of the Explanation, what does it explain? Suppose the clause is split into two parts to read—

"A person serving under the Government of any State shall include—

(a) patwaris, choudkars

(b) any other village officer.... "

and we confine ourselves to the second part and apply Mr. Mohanty's test. What would it mean? Does it explain or illustrate anything? The clause then would reduce itself to this: a person serving under the Government shall include a village officer, provided such village officer is serving under the Government. We cannot see the necessity of such an explanation. The words "employed in the State" means, in our opinion, holding office in the State. (With regard to rest of clause (b) it may be really an illustration to sub-section (8) or it may well be an

extension of its scope: for, we do not know whether the status of patwaris, choukidars etc., all over India is such that they are Government servants in the ordinary sense of the terms. There is, however, no question of construction of this part of the clause as they are named as Government servants).

From the practical point of view also it does not appear to be reasonable to hold that while chaukidars and daffadars come within the prohibition of sub-section (8), the Presidents of the Choukidari Unions, who are much more influential men, are to be regarded as outside the prohibition. We are in agreement with the reasons given in the case cited above (*Jadumani Mangaraj vs. Dinabandhu Sahu*). We accordingly hold that the Presidents of Choukadari Unions are persons serving under the Government of the State of Orissa within the meaning of Section 123 (8), Explanation (b).

Coming now to the fact of their having actually canvassed and actively worked for the respondent, Golam Rub, President of Union No. 4 of Kesanagar P.S., Natabar Biswal, President of Union No. 3 of the said P.S. and Raj Kishore Mohanty, President of Union No. 6 are signatories to the nomination forms either as proposer or seconder while Jatindranath Bhuyan, President of Union No. 1 of the same P.S. is named only as a canvasser and worker. The evidence against every one of them is examined separately—

Golam Rub.—He signed as seconder on the nomination form and the allegation against him in Para. 7(a) of the petition and item No. 9 of the list of particulars is that he actively canvassed. The place and date of the alleged canvassing are vague, i.e., in the constituency and whole period of election, but one date 24th January, 1952 is also found mentioned not only against him but all the other 3 Presidents also though from the evidence on record nothing could be gathered as to what was done by them, particularly on that day. The evidence of the petitioner P.W.2 is that he did propaganda and was at times moving with the respondent. His house is further said to have been used as election office but no such case is mentioned in the petition. In cross-examination he gives particular places of canvassing, i.e., in Kesanagar village and *Hat* and at Jagannathpur which are hard to believe because the list of particulars as already mentioned is silent about them. He has stated to have heard him requesting Uzrat Ali, Kala Mian and some others, but they have not been examined to corroborate. The petitioner also added that this President canvassed in Samantarapur, Bhoipada and Mangdelpur P.W.8 of Samantarapur who supported the petitioner on the point of canvassing is a man highly interested as already said. Moreover he excludes the presence of the petitioner or his worker when the President is said to have requested him. The two other witnesses of the village are P.Ws.13 and 23. The latter again is much too interested for reliance as an independent witness. The former, a resident under Union No. 2 wrongly stated to be a resident of Union No. 1. Any way, he does not know even the name of his own President. P.Ws. 12 and 15 are of village Bhoipada, a village about 3 miles away from Praharajpur where the house of the President is. These two witnesses have not been believed before for reasons already recorded. Besides P.W. 12 does not speak of the presence of the petitioner at the time of the canvassing. No other witness of any other village mentioned by the petitioner has been examined to corroborate.

The President himself has been examined as R.W.13 to deny canvassing and the use of his house as election office. He states to have signed the nomination paper as seconder at the instance of his brother Golam Rasul though Natabar Bhuyan was also present at the time. He has specifically denied having requested P.W. 8. But it is at the same time curious to hear him say that he did not go to *Hat* which is less than a mile from his house and although he passed by that way. This was probably because of his anxiety to escape the allegation of canvassing there. There are other witnesses No. 8 of Ramchandrapur, No. 18 of his own village Praharajpur besides the respondent R.W.62 and his worker Natabar Bhuyan R.W.58 to deny canvassing or any work by this president. To sum up, therefore, we find that the case of this President having worked or canvassed, as alleged, has not been substantiated.

Natabar Biswal and Raikishore Mohanty, the two Presidents are found mentioned together in Para. 7(b) of the petition and item No. 10 of the list of particulars. Besides being proposers on the nomination papers they are said to have actively worked for the respondent. Natabar Biswal is further alleged to have taken charge of feeding workers and propagandists of the respondent. But as different witnesses have been examined against these Presidents on both sides, we take up the evidence separately against each.

Natabar Biswal.—P.W. 2, the petitioner saw him doing propaganda in Katua, Bastapara, Thoriapara and Somepur but none of these places are found mentioned in the list of particulars which is as vague as against others already mentioned. He also saw men taking meals at his place and names six of them P.W. 9 of Kamarpara, a village not named by the petitioner is examined to say that he was requested by the President and he further saw him requesting villagers of Somepur, Patua and his own. He also saw him with the respondent in a meeting on sand bed of river Paika. As many as 20 men were present when the request was made to him, but none is examined to corroborate. He saw him canvassing at Bhagabat-ghar in his own village, in the house of one Khuntia in Patua and in front of Hari Sahu's shop at Somepur. Definite name of Hari Sahu having been given in evidence the respondent examined him as R.W.27 to deny any such canvassing. The witness P.W.9 goes a step further than the petitioner in saying that he was threatened by him with dire consequences in case he would not vote for the respondent. There is no such case of threat in the petition so far as this president is concerned. Moreover he did not inform the petitioner about the canvassing by this President although he himself had decided to vote for the petitioner. P.W.17 is a resident of Bastapara and his evidence is that the president called villagers at Bhagabat-ghar and asked them to vote for the respondent. It was 10 to 15 days before the polls but it is hard to believe that such open canvassing would be going on in spite of the circular letters issued to the President through Thana Officers not to take part in the election. *Vide Exts. J and J(1)* (Original Memo. dated December 1951 of S.D.O. and Ext. J, the copy of the same dated the 4th December, 1951, to the Thana Officers). The S.D.O. or the Returning Officer Mr. K. C. Das has been examined as R.W.29, to support P.W.20 is of Somepur. He poses to be a washerman of the President and states to have seen many persons taking meals at his place when he went to bring clothes for washing. He names four of the meal-takers, two only being those named by the petitioner also, i.e., Madan Das and Sahadeb Das. But curiously enough Natabar Bhuyan a conspicuous man rather, has been named by this witness but not by the petitioner. This washerman seems to have miraculous memory when he gives the number of clothes given to him for washing on that particular day. The only other witness P.W.23 of Samantarapur is an interested man besides his evidence contains no particulars of canvassing. Many persons have been examined on the side of the respondent to deny canvassing and feeding of workers. R.Ws.1 and 6 of Jasapara are of his Union besides R.Ws.7,27 and 57 have been examined to deny. The respondent and his worker Natabar Bhuyan have also denied. The President himself has been examined as R.W.9. He states to have received two circulars, one on the 18th or 19th December forbidding working by Presidents for any candidate and another about three days later asking them to help the officers going on duty. He was operated for gastric ulcer and was discharged in January or February, 1951. But his evidence that he was not moving freely in the election period, i.e., in November or December 1951 can hardly stand to reason. Besides he has been contradicted on the point by R.W.6. He was at times a primary member of Congress. But this cannot necessarily lead to an inference without substantive evidence that he was actually working besides having signed as a proposer. Considering the evidence on both sides we feel little hesitation in holding that the case of canvassing or feeding workers has not been substantiated beyond reasonable doubt.

Rajk. shore Mohanty.—He is wrongly stated by the petitioner P.W 2 to have been the president of Union No. 4. He was rather president of Union No. 6. Beside propaganda in Union Nos. 5 and 6 the petitioner went beyond his petition in saying that the workers of the respondent used to stay also in his house. Other witnesses Nos 16, 23 and 37 have been examined to speak against this president. P.W.16 of Manijang comes to say that Rajk. shore had told him that he was called by the respondent to Cuttack two months or three months before the polls and was requested for canvassing. He also said that the President canvassed and the respondent and his workers stayed in his house. But this witness seems to be much too changeable in nature for safe reliance. He at first had sympathy for the petitioner, but his sympathy changed, though doubtful, as soon as he was not elected. P.W.25 of Utarkul took his law degree from Madhusudan Law College, Cuttack. He admitted that college was not closed but he went to do propaganda for the Socialist. He states to have seen the president canvassing 3 or 4 days before and also in the night previous to the date of polls. But to discredit his testimony, the respondent has examined the clerk of the Law College R.W.14 who has proved the entries Exts. 1 to 1-8 in the attendance register to show that this student was present on those days. Moreover this student appears to be an out and out Socialist and a regular reader of the Socialist paper *Krushak* from 1941 or 1950. On this account also he cannot be relied upon as an independent witness. P.W.37, of Samantarapur, as already mentioned, is worker and polling agent

of the petitioner. It is, therefore, found that there is hardly any independent and reliable witness against this president. He could not be examined as according to the respondent, he is said to have been won over. The respondent himself has denied to have called him to Cuttack as alleged. R.W.28, the Secretary of Utarkul Middle English School of which Rajkishore Mohanty is the President has also been examined to deny canvassing.

Having thus finished the signatory presidents, we come to Jotindranath Bhuyan, President of Union No. 1, who is mentioned to have been procured to work actively for the respondent in Para. 7(c) of the petition and item No. 11 of the list of particulars. P.W.2 has improved as usual by saying that he was a whole-time worker and went from village to village with the respondent and did propaganda. He has stated to have seen him working in 7 or 8 villages of his own Union No. 1, 5 villages in Union No. 2 and one village in Union No. 6. But all these details, as usual, are lacking in the petition and the list of particulars. He states to have written a letter to the S.D.O. complaining about this president. The S.D.O. (R.W.29) denies to have received any such letter. But strangely enough, the copy of the letter dated the 15th December 1951 Ext. A has been marked on the side of the respondent. The learned Advocate for the respondent argued that it was exhibited on his side because in it no mention of other presidents who are alleged to have worked has been mentioned. Be that as it may, this letter for what it is worth is dated long after the circular Ext. J(I) already mentioned. Moreover the petitioner admits that no step was taken on this letter, if any, and he himself made no enquiry about it from the S.D.O. These statements go to some extent, to support the evidence of the S.D.O. that he did not receive any such letter. Besides the petitioner, P.W.8, who is an interested man states to have seen him distributing tickets with printed pair of bullocks, (symbol of the respondent), 3 or 4 days before the polls. He, however, is supported by none on this point. P.W.10 speaks in general way about this president but he cannot be believed for the comment already made. Similarly P.W.13 speaks about general canvassing by him and others. But strangely enough he does not know any of the canvassers of the petitioner for whom he has come to depose. P.W.27 speaks of canvassing in village Radhanagar. He does not know if any other person canvassed for the respondent and conspicuously enough he does not know of canvassing either by the petitioner or his workers. P.W.31 of Guall states about canvassing by him and U.K. Praharaj already mentioned in his village, one or two days before or after Kumar Purnima, i.e., 15th October, 1951 which can hardly be believed. On these evidence with the vague allegations in the petition and the list of particulars the petitioner can hardly be held to have proved his case against this president also. The president has examined himself as R.W.15 to deny the allegations levelled against him. There are other witnesses also but we need hardly discuss their evidence when the petitioner, as already said, has failed to prove his own case.

Next we take up the case about Lakshmidhar Mohapatra mentioned in para. 6(c) of the petition and item No. 8 of the list of particulars. Therein it is mentioned in substance that the service of this man who is the postmaster of Sirlo-Nuagan Post Office was procured for the purpose of election of the respondent so much so that he along with others published an appeal to the electors to support the respondent. The said appeal was distributed in the constituency and during the whole period of election and on the 21st December, 1951. In the written statement Para. 12(c) it is contended in substance that the respondent never procured the services of the man for the purpose of his election. He never requested him to publish any appeal to the electors, he denied any such appeal having either been published or distributed in the constituency during the election and contended further that it was not to his knowledge or at his instance or with his connivance or to the knowledge or connivance of his agents. If any such appeal is found to have been published, the respondent believed that it was surreptitiously done by or on behalf of the petitioner. It was also disputed that Lakshmidhar Mohapatra being an extra-departmental man acting as Postmaster, Sirlo was at all a Government servant.

The question, therefore, is whether an Extra Departmental Agent (hereafter referred to as E.D.A.) is "a person serving under the Government of India". This question also was decided in the affirmative by the Cuttack Tribunal in *Jadumoni Mangaraj vs. Dinabandhu Sahu* (*Orissa Gazette Extraordinary* No. 98, dated the 17th May, 1954) and the observation of the Supreme Court to which an appeal was taken has already been quoted in another connection.

Mr. S. K. Mohanty for the Respondent contends that E.D.As. are not Government servants but agent of the Postal Department. The distinction between a servant and an agent is well established. An agent is employed to do specified

things but a servant is engaged not merely to do specified things but in doing them to carry out orders. A servant is also an agent in relation to third persons but his employment involves the element of discipline, control and subordination. The pith and substance of the matter is put by Mr. Justice Bramwell, thus:

'A principal has the right to direct what the agent has to do, and the master has not only that right but also the right to say how it is to be done' [R. V. Walker (1858) 27 L.J. Com. Law, p. 207].

The legal position, as stated above, is not disputed by Counsel on either side and it is unnecessary to elaborate it. But Mr. Mohanty contends that the application of the suggested test to the functions of the E.D.As. and the manner of performance of these functions lead to the conclusion that they are not servants at all, and in advancing such a contention he relies mainly on three things—(1) the description of E.D.As, (2) the distinction maintained throughout the Rules in the Posts and Telegraphs Manual between E.D.As. and departmental employees, and (3) the difference in the conditions of their employment and the latitude they enjoy in carrying out their duties.

As regards their description, Mr. Mohanty lays stress on the fact that they are outside the department ("extra-departmental") and that they are scrupulously described in the Rules as 'agents' and not 'officers' or 'employees'. The short answer to this contention is that the nomenclature is immaterial if their functions and their relationship with the department constitute a service under the department.

Mr. Mohanty next points out with reference to various Rules in the P. & T. Manual, that wherever there is a provision specifically mentioning E.D.As. and applying to other employees as well, care has been taken to use the term "extra-departmental agents" in contradiction to "departmental employees". The following Rules are referred to—Volume II—Rules 103, 191, 196, 208; Vol. IV, Rules 3 and 91. It is unnecessary to state what those Rules provide because Mr. Mohanty's point is not that they do not apply to E.D.As. but that they make a distinction between them and "departmental employees". It may be conceded, as indeed the Rules referred to and various other Rules in the P. & T. Manual show, that E.D.As. are treated as a separate class. But that by itself will not determine their true relationship with the Government of India. The matter is not one of classification.

The more important question, however, arises in connection with the conditions of their employment and the freedom that Mr. Mohanty contends they enjoy in carrying out their functions. Mr. Mohanty's contentions can be summarised as follows: (1) That E.D.As. are not whole-time servants but are chosen from school masters, station masters, shop-keepers, retired Government servants etc. and that one of the conditions of their employment is that they must be persons of independent means (*vide* P. & T. Manual Vol. II Rule 284, Branch Office Rules, Rule 64); (2) that they can provide substitutes for carrying out the work (*vide* Branch Office Rules, Rule 67(b)); (3) that they are not governed by the Government Servants' Conduct Rules; (4) that the form of security bond to be executed by them is different from the form for departmental employees (*vide* Rule 208, sec. 5 and sec. 16); (5) that their leave application is in a different form (*vide* Rule 91 of Vol. IV); (6) that they can choose their own time to work, and (7) that they can make their own arrangement for carriage of mails (*vide* rule 89 of the Branch Office Rules).

On the other hand, an examination of the conditions of employment of E.D.As. as laid down in the P. & T. Manual discloses the extent of control of the Postal Department over them, and their subordination to the Department. Volume IV of the P. & T. Manual deals with "Establishment". Rule 1 of this volume says that the rules contained in this volume apply equally to officers of all the different branches of the service unless it is otherwise expressly specified as applicable to a particular branch or to a particular class of Government servants. Rules 15 to 18 in this volume occur under the heading 'Orders of appointment, promotion or transfer'. Rule 16 is important. It provides for two things—in the case of a person newly appointed to a post—an oath and a separate declaration. There is nothing to suggest that the Rule is not applicable to E.D.As. The oath is in the following form:

"I.....do swear that I will be faithful and bear true allegiance to India and to the Constitution of India as by law established and that I will loyally to carry out the duties of my office. So help me God".

This clearly shows that the incumbent enters into an office and swears allegiance to the Constitution of India. As regards the separate declaration, there are two forms. One is for telegraphists etc.—there are reasons for a special form for them—and the other for “other officials of superior service and officials in Class IV service and Extra Departmental Agents”. The latter is in the following form—

“I do hereby declare that I have read the Government Servants’ Conduct Rules and thoroughly understood them.”

Mr. Mohanty is, therefore, not right in contending that the E.D.As. are not bound by the Government Servants’ Conduct Rules. He explains the declaration by saying that it contains merely a statement that the signatory has understood the rules. But it is to be observed that this is the form not only for E.D.As but for other officers admittedly departmental servants. It could not be contended that those other officers are not bound because they merely state in their declaration that they have understood the Government Servants’ Conduct Rules. Moreover, if E.D.As are really agents and not servants, there is no point in getting a declaration from them in respect of the Government Servants’ Conduct Rules.

Again, at the time of appointment E.D.As have to execute a security bond, Chapter V of Volume II of the P. & T. Manual deals with security deposits and Part I deals with ‘security deposits of employees’; Part II with ‘security deposits of contractors’; Part III with ‘security deposits for payment of charges on press telegrams’. In Part I under the heading “classes of Officials required to give security” occurs in rule 191, clause (k) of which refers to Extra Departmental Agents. It seems to us that the requirement of security is part of the engagement of E.D.As as a class of officials under the Postal Department and as a condition of their engagement what they state in the security bond is important. This bond is in the form Sec. 16 (*vide* rule 208 Vol. IV P. & T. Manual). The following recital shows the nature of the obligation for which security is given:

“Whereas the above bounden was on the day of 19 appointed to and now holds the office of at in the Postal Circle and whereas by virtue of his employment in the Post Office the said is required to perform public duties.....in accordance with the rules thereto relating prescribed from time to time by the Government of India, the Director-General or the Head of the Postal Circle in which he is employed and whereas the said has agreed and is bound to attend at the Post Office of or at the Post Office of any other place within the said Postal Circle where he may be a resident and where he is willing to serve for the purpose of discharging his duties at such time as his superior officers may appoint Now the condition of the above written bond is such that if the said has whilst he has been in the employment of Government in the Post Office duly performed and fulfilled all other duties of his aforesaid and shall whilst he shall be in such employment as aforesaid always duly perform and fulfil all other his duties aforesaid and shall not leave the said service without permission shall indemnify the said Governor-General from all loss owing to the dishonesty, neglect, default, disobedience or insolvency of the said

It is futile to suggest that such an obligation is consistent with the freedom that an agent enjoys in the performance of his functions. In our view these conditions are conditions of service. Mr. Mohanty does not appear to be correct in saying that an E.D.A can choose his own time of work and carry out his postal duties in such manner as he thinks fit.

It is unnecessary to refer to numerous other rules that find place in the P. & T. Manual but it is sufficient to say that in the essential matter of control, discipline and subordination an E.D.A. is in no different position than a servant of the Postal Department. The fact that they are a class apart from other servants with regard to various other matters does not seem to be important at all. Indeed if they were merely subject to the obligation of a contract different from a contract of service there would have been no necessity of regulating their conduct in the various rules in which we find reference to them. In the Manual there is a chapter on ‘contract’ in which the terms of their employment as agents might very well have been included on the footing that their contracts like those mentioned in the chapter are contracts other than the contracts of service. We accordingly hold that Extra Departmental Agents are persons serving under the Government of India, within the meaning of clause (8) of section 123.

Having found as above that Sri Mohapatra then an E.D.A. comes within the category of a person serving under the Government, it has to be seen on facts as to how far the allegations against him have been substantiated. There is no clear allegation about canvassing and the places and dates thereof in the petition or in the list appended thereto. There is besides general vagueness regarding the sort of services procured if at all except publication and distribution of some pamphlets. But at the time of trial the petitioner P.W. 2 and his solitary witness Brajabandhu Rath of Mangdeipur P.W. 29 stated about canvassing by Sri Mohapatra besides distribution of pamphlets marked 'X' for identification (Kesanagar Nirbachana O Bhabhi Syata). P.W. 2 stated to have seen the pamphlets 'X' being distributed by the workers of respondent. He, however, did not at first state to have witnessed the actual distribution by Sri Mohapatra himself. On the next day, he came more prepared to say that he had actually seen him distributing the pamphlets about 8 to 10 days before the polls began at Mangdeipur (polling dates were 22nd January 1952 to 24th January 1952, as conceded by the lawyers on both sides). He also states to have taken one of the pamphlets on the day from Baraju Rath P.W. 29 to whom some were given for distribution. He further added to have seen the distribution of as many as 200 to 300 pamphlets on three days at three places. He stated to have cited as witnesses some of the persons receiving the pamphlets but none has been examined. He stated to have learnt later from Sanatan Mukherjee that he along with Sital Chandra Mukherjee and Lakshmidhar Mohapatra had got the pamphlets printed. Sanatan Mukherjee is said to have been summoned but not examined and it is also significant that the petitioner did not complain against Mohapatra to anybody. P.W. 29 although said to have been the distributor of pamphlets on the side of respondent has come to support the petitioner saying not only about the alleged distribution but about canvassing also, a case not made out in the petition as already said. He stated in cross-examination that about 50 to 60 pamphlets were distributed in his village and that he was given about 10 pamphlets for distribution. This was at about 3 or 4 P.M. in the latter part of Agrahan. On reference to calendar, month of Agrahan corresponds from 17th November to 17th December 1951. So, the pamphlets must, as is his evidence, have been given to him early in December. But this evidence is clearly falsified by the evidence of P.W. 19, the Manager of Jyoti Press where it was printed. Ext. 9 dated 20th December 1951 may be the entry in the order book relating to this pamphlet. The order purports to have been placed on that day by one Sital Chandra Mukherjee (of a different village than that shown in the pamphlet itself) who also has not been examined. The date of delivery noted against the order is 31st December, 1951. Therefore, the distribution could not have been made as mentioned by this witness because it precedes not only the date of delivery from the press but even the date of the order for printing. Unfortunately the original order is stated by P.W. 19 to have been destroyed and it could not, therefore, be proved that Lakshmidhar Mohapatra had actually signed any such pamphlet. None of the other signatories is examined to say that Sri Mohapatra had actually signed. Mohapatra R.W. 40, an extra departmental agent of Sirlo Nabagram P.O. denied to have canvassed or to have signed and distributed any pamphlets. He also denied to have given any pamphlets to Brajabandhu Rath for distribution. He stated to have learnt about the pamphlets from the petitioner himself one or 2 months after the election was over. Similarly the respondent, R.W. 62, has denied having utilised the services or to have requested him for any work concerning the election.

On such evidence on the side of the petitioner it is difficult for us to hold in face of the denial that Lakshmidhar Mohapatra had actually published or distributed the pamphlets marked 'X' (which is not even within the list of exhibited documents). The case of canvassing must also be overruled not only on the evidence on record but also because of the absence of clear allegation in the petition.

Next one Janakinath Sahu, a person serving under the State Government has been brought in by amendment dated 24th June, 1953 when the hearing of the case was taken up by the then Tribunal. This amendment has seriously been questioned by Mr. Mohanty as without jurisdiction and illegal although no objection seems to have been taken at the time the order was passed. It has been contended with some force that there is no provision for amendment of election petition under the Representation of the People Act 1951. Section 83(3) therein provides for amendment of the list of particulars. As a matter of fact, the petition itself is not sought to be amended, but only the list of particulars has been amended by adding item No. 20(a). So, the amendment, for what it is worth, cannot be said to be without jurisdiction and as such this Tribunal cannot now go behind the order allowing the amendment. It has also been argued by Mr. Mohanty that the addition of this particular should not be looked into

and rather ignored because there is no recital to support it in the petition itself. According to Section 83(1) a concise statement of fact has to be mentioned in the petition to which list of particulars is to be appended as provided in Clause 2 of the said Section. Mr. Das on the side of the petitioner, however, argued that there is concise statement in Paras 3 and 19 of the petition and consequently the list amended should not be ignored. But Para 3 clearly is much too general to justify or include the amendment and a plain reading of Para 19 which corresponds to item No. 20 of the list cannot in our opinion point to any such case as has been sought to be made out by the amendment.

However, we proceed to examine the case on merit against Janakinath Sahu. Admittedly he was and is a Government servant working as Accountant of the Nabapatna Co-operative Society, his services having been placed under the Director of Industries. It is also admitted by him (R.W.16) that he signed the polling agent form Ext. 3 taken to him by one Ram Chandra Ghose *alias* Lalu Babu, a worker of the respondent. He at first objected to sign because he had no time to work as polling agent, but Lalu Babu insisted as asked by the respondent to take his signature and also mentioned that there would be other persons to work as polling agent if he would not work as such. Therefore he signed. But subsequently when he learnt on enquiry from Hem Babu (R.W.37), the Secretary of the Central Co-operative Bank, Cuttack, who supported him, that being a Government servant he could not act as such agent, he went to the house of Lalu Babu and informed him accordingly. He denied to have acted, therefore, as polling agent or to have signed any polling agent form before the Presiding Officer. He did not enter the polling booth except for casting his vote. He also denied canvassing. The respondent (R.W.62) admitted to have sent two forms to him for signature and at that time he did not know that he was a Government servant. Janakinath Sahu signed the two polling agent forms out of which he (respondent) sent one to the returning officer and he did not make over the other form to Janakinath, who informed him that he would not be able to work as polling agent being a Government servant, which was meant for production before the Presiding Officer.

The evidence on the side of the petitioner, however, consists of his own and that of one P.W.7 who states to have acted as polling agent of the petitioner in Tarikund Booth No. 1 where Janakinath is said to have worked for the respondent. P.W. 2, the petitioner himself did not speak anything about Janakinath in his examination-in-chief. But in cross-examination he stated to have seen Janakinath on the last day of polling at Tarikund Booth working as polling agent of the respondent. He added that at that time he did not know that he was a Government servant and that he came to know about it about 15 days back. He was recalled on the 3rd day of his examination, i.e. on 27th June 1953 to say that about 300 weaver-voters voted against him as Janakinath Sahu was the polling agent of the respondent. His witness P.W. 7, who was not named by the petitioner as his polling agent at Tarikund, is examined to say not only about Janakinath having acted as polling agent of the respondent but also to have seen him doing propaganda 8 or 10 times in January 1952 at Nabapatna. Such propaganda, according to him, was done in the office and also on the village road. But all these evidence about propaganda and influencing weaver-voters have to be read with caution in the absence of any such allegation in the amended list of particulars. There in Janakinath Sahu is mentioned to have been appointed as polling agent in order to obtain the assistance in furtherance of the prospect of the respondent's election. It is silent as to the manner in which the alleged assistance excepting by acting as polling agent was obtained. It cannot, therefore, lie in the mouth of the petitioner or his witness to say that weaver-voters were influenced or canvassed.

On the evidence, however, as mentioned above, it has to be taken that Janakinath Sahu did actually sign the polling agent forms. It has next to be seen if he actually acted as such. On reference to form No. 6 relating to appointment of polling agents, it would be found that apart from sending the form to the Returning Officer, a declaration is to be signed by the polling agent before the Presiding Officer. The evidence of Janakinath Sahu and the respondent in substance is that the second form was not used and that Janakinath did not present or sign any such form or declaration before the Presiding Officer. Ext. 3 is the polling agent form actually signed by the respondent and Janakinath Sahu and it is addressed to the Returning Officer, Kesanagar constituency, the column of declaration to be signed before the Presiding Officer in it is blank. The Returning Officer, R.W. 29 and the Assistant Returning Officer, R.W. 30 both have said that no such polling agent form signed by Janakinath Sahu was received in their office from the Presiding Officer. Their evidence consequently supports the case of the respondent that Janakinath Sahu did not file the form with the declaration before the Presiding Officer and as such he did not work as his polling agent. Some comment, as usual, is made regarding suppression of the form. But it was

up to the petitioner to have examined or applied at least for the examination of one Badyanath Babu of the Veterinary Department who according to P.W. 7 was the Presiding Officer. The evidence as is on record, can lead to the only inference that Janakinath Sahu having been appointed did not act as polling agent of the respondent. Mr. Das contended that there has been no cancellation of appointment as provided under Section 48 of the R. P. Act and that the respondent did not produce the second form signed by Janakinath which according to his testimony must have been lying with him. The contentions are not without force, but he contended further that the doing of work as polling agent was immaterial because there was an attempt on the part of the respondent to take assistance from a Government servant. Mr. Mohanty, on the other hand, contended that the duties of polling agents cannot come within any assistance for furtherance of prospect of election and that it cannot also tantamount to attempt as defined in the Indian Penal Code. According to him any act depending for completion on the volition of some one else is not an attempt according to law.

But all these contentions about Janakinath Sahu dwindle into insignificance because of the decision of the Supreme Court in a case from Himachal Pradesh reported subsequently in the October issue of 1954—All India Reporter page 587 at page 592. Their Lordships finding nothing in the Act or in the Rules barring the appointment of a Government servant as a polling agent and on the reasoning adopted by the same Court in this case (reported in A.I.R. 1954 Supreme Court 202) held that such appointment did not *per se* contravene Section 123(8). There was neither anything in the nature of the duties of the polling agent which necessarily can bring him within the prohibition under the said Section. Therefore, it has got to be established that the candidate or his agent had abused the right to appoint a Government servant as polling agent by exploiting the situation for furthering his election prospects and then the matter can be dealt with as an infringement of Section 123(8).

In this case, as already mentioned, there is nothing in the list of particulars that the appointment was made for the purpose of any exploitation and the evidence at the trial regarding canvassing or influencing weaver-voters has to be ignored as a subsequent development. We are rather inclined to hold that apart from signing the forms Janakinath is not proved to have acted as polling agent of the petitioner. However, it is established on the authority quoted above that mere appointment of a Government servant as polling agent and even his having acted as such cannot *per se* come within the mischief of Section 123(8) R.P. Act.

Having thus recorded our findings regarding all the Government servants named in the petition and list of particulars it is concluded that none of them is proved to have been obtained or procured or abetted or attempted to have been obtained or procured by the respondent or his workers or by any other person with the connivance of the respondent or his workers any assistance for the furtherance of the prospect of the respondent's election and that the signatures of those named either as proposer, seconder or polling agent were not proved to have been obtained as part of the plan for furthering the prospect of the election of the respondent. With the above findings the first part of the petitioner's case about Government servants is concluded.

The second part of his case, as already mentioned, is in substance that the election was not a free one because of undue influence, threats and rowdyism as detailed in Paras 10 to 15 of the petition and items Nos. 13 to 17 of the list of particulars. This part of the case consists of general allegations of threat and rowdyism by a batch of persons named in Para. 10 of the petition and item No. 13 of the list of particulars; besides particular instances of threat and undue influence as mentioned in subsequent paras Nos. 11 to 15 and items Nos. 14 to 17.

Now, the general allegations are that the 45 persons named in the petition along with others moved out in the constituency with lathis in their hands warning people that unless they vote for the Minister respondent No. 1 they would be seriously dealt with, their properties would be looted and they shall be subjected to all possible harassments. They also tried to prevent under threat of violence the workers and supporters of the petitioner from carrying on their election propaganda. All these became the usual programme of the respondent and his workers all through the election. The evidence of the petitioner P.W. 2 himself on the point in substance is that about 50 workers of the respondent used at times to go out in batches threatening people with dire consequences unless they vote for the respondent. They threatened further saying that they would not be able to gather crops from the fields and that they would create such situations that they would feel later on. They also shouted violent slogans. Natabar Bhuyan, the worker of the respondent was prosecuted in about 50 criminal cases and he also used to

threaten the petitioner's workers. Besides he took part in other instances of force and assaults to be discussed hereafter. In cross-examination he stated that paddy crops were standing in some of the low lying fields in January 1952 and Rabi crops were standing on many fields. This fact however, is challenged on the other side. He conceded that the workers of the respondent never stopped reaping of crops from any fields and that they never ill-treated the petitioner but canvassed more vehemently on seeing him. He also conceded that there were processions started for propaganda meetings on his behalf also and posters attached to lathis also were carried in his procession. The other witnesses on his side on the point are P.Ws. 5, 8, 9, 12 to 18 and 25. They speak about various sorts of treats held out by Natabar Bhuyan and others who were moving out in batches armed with lathis that they would be put to troubles, their houses and crops would be looted in case they would not vote for the respondent. Due to such threats P.Ws. 13 and 14 state to have changed their minds but P.Ws. 15 and 16 were not frightened. The latter also spoke of a meeting in his village Nanijang where the respondent himself is said to have held out threats. According to P.W. 8, however, threats were carried out at Kesangar in the presence of the petitioner's workers including P.Ws. 23 and 37, but they themselves have not spoken on the point. It has been contended with some force by Mr. Mohanty that although these two workers were working all round for the petitioner, it is strange that they did not speak on the point of rowdyism or goondalism. P.W. 25, Gajendranath Das is another worker of the petitioner and he spoke about a meeting wherein the respondent asked for vote otherwise there would be trouble (Anists Heba).

On the side of the respondent, on the other hand, witnesses Nos. 1, 3 to 7, 10, 18, 26 and 27 have been examined to deny besides R.W. 58 and 62 Natabar Bhuyan and the respondent respectively. Among them R.W. 7 has spoken that the congress people were speaking that if congress men were not elected there would be loot, arson and anarchy everywhere. But this cannot be regarded as an admission of threat necessarily. It may also mean rightly or wrongly the state of affairs foreseen by the witness on the failure of the congress regime for otherwise his statement in chief that Natabar Bhuyan and others did not threaten anybody but rather they cajoled men can have no meaning. R.W. 10 admitted canvassing by Kalikrupa Dutta who according to R.Ws. 3 and 4 besides respondent R.W. 62 himself did not canvass or propagate. He also admitted canvassing by Kiranbala Samanta but could not say for whom. This witness is a retired Government servant but his name is among the 45 rowdies. He is Secretary of the Society of which Kiranbala Samanta is the President. R.W. 58 and 62 deny having held out any threat whatsoever anywhere and in the meeting at Nanijang in particular.

The learned lawyer for the petitioner has urged strongly against the previous bad history of Natabar Bhuyan. Although Natabar Bhuyan denied in this case, his attention was drawn to his previous statement, Ext. 24 where he admitted that he was accused in more than 50 criminal cases. Mr. Mohanty, on the other hand, contended that he might have stated there in sheer disgust. We, however, are to take the evidence as recorded, but that by itself cannot expose the character of the man unless he is shown to have been successfully prosecuted. More large number of criminal cases might also indicate some deep seated enmity or large number of enemies to harass him. Similarly our attention was drawn to the statement of Jyotindranath Bhuyan (R.W. 15), another rowdy named, that he did not remember how many criminal cases were filed against him; they may be two or three or ten. But their previous conduct, even if any, cannot lead to an inference of guilt as alleged in this case. His statement that he was appointed President in 1950 (when the respondent was a Minister) in which year Golam Rub (R.W. 13) was appointed is not, however, supported by Golam Rub himself who spoke that he was President since 6 or 7 years. R.W. 51 Sk. Uzir Head clerk of Choukidari Department has been examined. His evidence on reference to appointment register was that Golam Rub was President since 1947.

However on the above evidence and circumstances therefore we feel unable to find as a fact that the general allegations of threat and rowdyism at the instance or to the knowledge of the respondent or his workers have been proved beyond reasonable doubt. Almost all the witnesses on the side of the petitioner are more or less interested and no safe reliance can be placed on them for the reasons aforesaid.

To come now to the particular instances detailed in the petition and the list of particulars there are four such, namely:—(1) Threat to Duryodhan personally and through his uncle Sadhu Charan Das (Para. 11 item No. 14); (2) Assault on Kishore Mohan Das at Raghunathpur meeting on 13th January 1952 (para. 12

and item No. 15); (3) At Holipur on 17th January 1952 supporters of respondent attacked and seriously injured Communist workers who had gone to propagate their views against the Congress and the respondent (Paras 13 and 14 and item No. 16); (4). On 10th January 1952 number of persons went in procession to meeting at Kesanagar where the respondent was present, tore out and trampled down leaflets and posters of the petitioner and the Communist (Para. 15, item No. 17).

This instance as already mentioned is in paragraph 11 of the petition, which is as follows:—

“That the respondent No. 1 himself threatened the electors and the supporters of the petitioners that they would be seriously dealt with in case they would support the petitioner or if they would vote for him.

That respondent No. 1 prevented one Durjodhan Das, an active supporter of the petitioner from carrying on election work for him. Sri Durjodhan Das earns his livelihood by looking after the properties of his uncle Sri Sadhu Charan Das. The respondent No. 1 wrote a letter dated 20th December 1951 to Sadhu Charan Das, wherein he requested him to prevent Durjodhan Das from supporting the petitioner in his elections. In the said letter respondent No. 1 said that even though warned Durjodhan is not refraining from supporting the petitioner in the elections. Respondent No. 1 also said that if petitioner would be supported the properties of Sadhu Charan would be destroyed and looted and his crop cannot be brought from the fields to his farm yard. Due to the said threat Sadhu Charan, while forwarding the said letter to Durjodhan warned him that in case he would not refrain from supporting the petitioner he would be deprived of the management of the said Sadhu Charan's properties. The said letter, which was written in most terrorising terms was shown by Durjodhan to his co-villagers. Due to the said facts Durjodhan refrained from supporting the petitioner and his villagers were so terrorised that when petitioner went to the locality it was difficult for him to get the audience of the electors of the locality for the purposes of his election work.

That due to the threats given in the said letter both to Durjodhan and the entire public the petitioner lost the support of thousands of voters.

That the respondent No. 1 knowing the facts to be false stated the same in the letter in order to create a panic in the area. This act of undue influence and threat is responsible for having demoralised the entire elections in the area.”

Petitioner's charge would be palpable from the last sub-paragraph where the petitioner complains of 'False Statement'. The charge, therefore, is that the respondent is guilty of an attempt to prejudice the prospects of the petitioner's election by gross misrepresentation to Sadhu Charan. What is stated to be false is the respondent's statement about looting of crops, destruction of property etc. Clearly this does not amount to an allegation of undue influence within the meaning of Section 123(2). Under proviso (a) (i), a threat to any candidate or to any person in whom the candidate is interested with injury of any kind is interference with an electoral right and constitutes undue influence.

The case, however, that is sought to be established in the evidence and arguments is that what is stated in the letter (Ext. 6) about looting of crops and destruction of property is a warning of what the respondent himself would bring about if Durjodhan was not dissuaded from acting for the petitioner. Mr. Mohanty argues that assuming that the letter was a threat by the respondent himself, it was a threat to Sadhu Charan and not to Durjodhan. Therefore, the respondent has not threatened “a person in whom a candidate is interested”. Mr. Das for the petitioner argues that it was an indirect threat to Durjodhan and at any rate an attempt to threaten Durjodhan to which Mr. Mohanty replies that at best it may be a preparation but not an attempt to carry out the threat.

However, that may be, the real question is whether the letter contained such a threat. It is necessary here to examine the contents of the letter which is exhibit 6 dated 20th December 1951 and was admittedly written by the respondent. The letter which is in Oriya is in four paragraphs. In the first paragraph the respondent merely states that it is with great regret that he is writing to Sadhu Charan on a very serious matter. In the second paragraph he describes the activities of Durjodhan. He says that although Sadhu Charan has always encouraged him and the Congress organisation in the election, in his own house Durjodhan is doing his best to vilify the Congress and is actively engaged in a

scurrilous propaganda against the Congress. He says further that in spite of warnings by several people, Durjodhan has refused to stop his activities and has openly declared that he does not care for Sadhu Charan or his views. The third paragraph is important because it is said to contain the threat. In this paragraph the respondent says that what is described is only the beginning and that if it goes on the consequences will be disastrous. Then he adds "You will not be able to gather your crops from your fields. Depredation of goondas will increase so much that it will be difficult to gather the harvest. I am, therefore, giving you timely warning. Do not blame me later for not having warned you". The fourth paragraph is unimportant and contains enquiries about Sadhu Charan.

Relying on the words in the third paragraph the petitioner contends that this is a direct threat to Sadhu Charan that his crops will be looted and his properties rendered insecure in case Durjodhan is allowed by him to continue in his activities. Stress is laid on the fact that the writer says to Sadhu Charan that he is warned in time lest he should blame him later. It is argued that if the letter merely refers to the danger of goondalism and loot then there was no occasion for this respondent to say that he is warning Sadhu Charan lest he should be blamed later.

We do not think that the letter is susceptible of the meaning ascribed to it by the petitioner. If the words, upon which stress has been laid stood by themselves, it might possibly be argued that they contain a direct threat from the respondent himself. But reading the letter as a whole and those words in their context, it is clear that the writer intended to convey to a congress minded person the consequences of the activities of the Socialists. In this he may be right or wrong. He may have deliberately exaggerated or have drawn a picture of the future purely from imagination but there is no doubt as to his intention. This letter, in our view, is intended to influence Sadhu Charan, who, according to the evidence, is a congress supporter, to exert pressure upon Durjodhan to dissuade him from carrying on propaganda against the Congress. The method by which Sadhu Charan is attempted to be persuaded is by depicting in exaggerated terms the supposed consequences of the ascendancy of the Socialists. Whether such method of persuasion is by itself objectionable or not is another matter but there can be no doubt that it did not involve any threat of loot etc. from the respondent himself. True, he says to Sadhu Charan "I am warning you and do not blame me later". But this does not carry an implication that he himself will carry out the threats. In our view, it is merely an officious way of bringing home to Sadhu Charan the dangers that the respondent himself apprehends. Indeed, as already stated, the petitioner understood the letter in the same way as we have considered it and alleged in his petition that the respondent was guilty of "false statements". We hold, therefore, that by writing the letter (Exhibit 6) the respondent is not guilty of threatening any one with any injury. The case on exhibit 6 as canvassed, therefore, fails.

Although Mr. Das argued a case of undue influence [under section 123(2)] if the case stated in the petition an obvious attempt to bring it under Section 123(5) can be established upon a plain reading of the letter then it requires consideration. The matter can be shortly disposed of. Even if the respondent falsely suggested in the letter that Socialist victory will mean loot, depredation of goondas etc., it was not a statement of fact "in relation to the personal character of conduct of any candidate" within the meaning of the sub-section (5). However, such a case has not been argued and nothing more need be said about it.

Evidence has been led that apart from exhibit 6 Durjodhan was threatened by the respondent and his workers. Durjodhan, who is P.W. 5, says:

"Natabar Bhuiyan threatened saying that I will not be able to reap the crops and there will be other troubles and then no one will help me. I met respondent No. 1 in the village and he asked me not to work for the petitioner saying that I will not be able to maintain myself and will be put to much difficulty"

Natabar Bhuiyan (R.W. 58) is the main worker of the respondent. He as well as respondent No. (R.W. 62) deny having issued any threat to Durjodhan. In fact, the evidence of witnesses Nos. 1, 3, 4 and 5 for respondent is that Durjodhan continued to work right up to the end of the election. As stated above, there is not a word in the petition or particulars about any threat to Durjodhan except by means of the letter. We think that the case has been further developed in the evidence and hold that there is no satisfactory evidence of any direct threat to Durjodhan by or at the instance of Respondent No. 1.

There was some argument about the prejudice caused to the petitioner in the Holipur area on account of the letter (exhibit 6). The evidence on behalf of the petitioner is that Sadhu Charan forwarded the letter to Durjodhan and Durjodhan

showed it to the villagers and the entire area was demoralised. Besides, the petitioner and Durjodhan himself who are interested, the only other witness to speak on this point is P.W. 35 who is an unsummoned witness. In this connection stress has been laid on the evidence in cross-examination of R.W. 5 who said "Iswar Das is the brother of the wife of Durjodhan's maternal uncle. Durjodhan came when I was talking with Iswar. Durjodhan canvassed and after that I went away. Iswar said that he would request people to vote for the Socialist Party. At that time people were not willing to canvass for the Socialist Party openly. Propaganda was then going on full swing. Iswar Das feared Sadhu Charan Das as he may not like his canvassing for the Socialist Party". But the statement as it is, cannot help the contention over the effect of the letter. It was merely a personal fear of Iswar because Sadhu was a Congressman. He, however, made somewhat confused statement about unwillingness to open canvassing for Socialist because in the next breath he stated about "propaganda going on in full swing"

There was a photostat copy of the letter Ext. X published in the 'Matrubhumi' dated 15th March 1952. The despatcher of the Press R.W. 52 could not say who had placed the order for publication which, however, becomes immaterial for us as it was after the election was long over. We accordingly hold that the respondent was not guilty of any corrupt practice of threat or undue influence by writing the letter (Ext. 6).

(2) The evidence on this incident has been discussed when considering the allegations of assault by Debendranath Dutta in particular. We have found that the evidence of assault by Debendranath Dutta on Kishore was not substantiated. It has to be seen if the assault as an incident itself has been proved. The meeting at Raghunathpur on 13th January 1952 where the respondent himself was present is not disputed. P.W. 2 has spoken on the point but he was certainly not an eye witness to it. Besides he has named processionists to the meeting but most of them do not tally with the names mentioned in Para. 12 of the petition. The other witnesses on the point are P.Ws. 18 and 38 whose evidences are divergent as already mentioned before in this judgment. Besides the former is an interested man. No information was sent to Police although a serious injury is said to have been caused on Kishori. Kishori is not examined on the ground that he is employed at present at Jamshedpur. His father, P.W. 34, came unsummoned, but admitted that the address of his son was known to him. Hence non-examination of Kishori is not justified. It has already been observed that his evidence about the nature of injury and the effect thereof does not support the case stated in the petition. Neither has the doctor been examined to support.

On the other side R.Ws. 21 and 22 besides R.W. 58 and the respondent, R.W. 62, have come to deny any such incident. In our opinion, the evidence on record on the side of the petitioner cannot be held to have proved the incident of assault alleged.

(3) On this incident of assault on Communist workers at Holipur on 17th January 1952 there is practically no evidence worth the name and as a matter of fact the learned lawyer did not even press it at the time of argument. P.W. 2 the petitioner himself is a hearsay witness. Ext. 4(b) is the Station Diary entry dated 10th January 1952, i.e., two days after. But neither the officer who recorded the diary nor the informant Dusan Jane has been examined. Therefore, the Station Diary entry is of little evidentiary value. No other witness has been examined on the point. This incident, therefore, is neither proved nor pressed.

(4) On 10th January 1952 there was a procession leading to the meeting at Kesanagar. The respondent was present and the Chief Minister presided. The processionists are said to have torn away and trampled upon leaflets and posters of the petitioner and Communists on the way. It is said that the electors who protested were threatened with assault. The petitioner, P.W. 2 himself was not present at this incident as well. But on the information that he received, he wrote letter Ext. 1(a) to the Chief Minister complaining about the high-handed action of the respondent and his workers. This letter cannot be made much of because it contains his own statements and that too based on mere hearsay. P.W. 14, Hari Rout, states to have attended the meeting at Kesanagar but does not speak about tearing or trampling of flags and posters. The other two witnesses Nos. 23 and 37 on the point are staunch workers of the petitioner and related amongst themselves. But they also contradict each other on the point of protest against the alleged action. P.W. 23 who saw the incident from the shop of one Madhu Das stated that no one on behalf of the Socialist party had protested. This witness also made a self-contradictory statement when at one time he denied to have informed the petitioner about tearing of flags and posters but at another time stated to have informed him 2 or 3 days later. Ext. 4 is the Station Diary entry dated 10th January 1952 at 11 A.M. The officer who has made the entry

has not been examined. This entry, however, for what it is worth, mentions of tense feelings between the Congress workers on one side and the Socialists on the other on the point of removal of black flags and posters with writings "Student Killer Nabakrushna Choudhury Go Back". The officer anticipating serious breach of peace sent a special messenger asking for force to control. But the entry by itself apart from the then existing tense feeling cannot prove the incident of actual tearing and trampling down of the flags and posters.

Besides the denial by Natabar Bhuyan, R.W. 58, and the respondent himself R.W. 62 witnesses Nos. 1, 3 and 4 who state to have gone to the meeting deny the incident alleged. R.W. 1 did not return from the meeting by the way and so he could not say about the removal of the flags and posters which he had seen while going to the meeting. But the other two witnesses have said that they found the flags and posters intact even after the meeting which lasted till late in the night. Thus this incident also suffers from want of sufficient proof.

Besides the above allegations, undue influence pleaded in Paras 5 and 8 of the petition through Government servants and by their alleged actions has already been negated. In the result, it is concluded that the workers and supporters of respondent, who himself also, did not interfere with the free exercise of "electoral right" as defined in Section 79(d) by committing acts of rowdism and threatening voters in the constituency. Therefore, there was no corrupt practice and undue influence under Section 123(2) of the R.P. Act.

Next we come to the 3rd part of the case of the petition which relates to return of election expenses characterised as false in material particulars.

There is a charge against respondent No. 1 of filing a false Return of election expenses. The petitioner's allegations are:—(1) that certain expenses incurred by Respondent No. 1 have not been shown in his Return, namely, cost of posters, pamphlets etc., received from the Congress organisation; cost of expenses in using certain motor vehicles; expenses paid to some workers and certain outstanding dues still payable; (2) that he rewarded his workers by grants from his discretion any fund and such amounts are omitted from his Return; (3) that his accounts were not maintained according to law. It may be mentioned at once—and of this Mr. Mohanty has made a serious complaint—that no particulars whatsoever are given regarding these alleged omissions and irregularities. Mr. Das argues that lack of particulars is not fatal as this is a matter specially within the knowledge of the respondent.

Before we deal with these allegations, it is necessary to briefly set out the provisions of law in regard to election expenses. Section 44 of the Act lays down that every election agent shall maintain regular books of account containing such particulars as may be prescribed, and Rule 111 prescribes the particulars. Chapter VIII of Part V of the Act (Sections 76, 77 and 78) deals with election expenses and makes provision (in accordance with requirements to be prescribed by Rules) for the maximum expenses permissible and for lodging of a Return of expenses. In the Rules framed under the Act provision in this regard is contained in Chapter VII (rules 100 to 118). It will be necessary to notice only a few of these rules for our purpose. Rule 112 says *Inter alia* that a return of election expenses shall be filed in form 26 and shall contain the particulars specified in paragraphs 1 and 2, Schedule IV, accompanied by the prescribed declaration. Rule 117 prescribes the maximum election expenses to be the amount specified in Schedule V in respect of different kinds of constituencies in the different states. Rule 118 prescribes that the number of persons who may be employed for payment in connection with the election shall not exceed that specified in Schedule VI. For reasons that will appear later, it is necessary to examine form 26 which incorporates the requirements of Schedule IV. It consists of two paragraphs—the first in respect of 'Receipts' and the second in respect of 'Expenses'. In the first paragraph all moneys or equivalents of money received from any person 'including the candidate himself', clubs, society etc., in respect of any expense in connection with the election has to be shown. Paragraph 2 dealing with expenses is divided into 12 heads (Parts A to L). Under this paragraph in the appropriate Part has to be shown all payments made by the candidate, his agent or by anybody on his behalf or in his interest (including unpaid claims). Then follow the various appropriate heads of payment e.g. personal expenditure (Part A) remuneration of agents etc. (Part B) and so on. Parts A to J classify the expenditure into different heads. In Part K has to be shown "all expenditure incurred and payments made by the candidate or by his agent or by any person on his behalf or in his interest in connection with the election and not included in the foregoing Parts". Part L is the total of Parts A to K.

Under section 124(4) the making of any Return of election expenses which is false in any material particular is a minor corrupt practice. If the returned candidate is guilty of such a corrupt practice, his election can be set aside under clause (a) of sub-section (2) of section 100 if the election has been procured or the result of the election has been materially affected, by such practice. We, therefore, proceed to examine how far the allegations have been proved and whether the result of the election has been materially affected by any corrupt practice.

We take up paragraph 18 first, where it is stated that the respondent's election 'expenses' were not maintained according to law. By the word 'expenses' is presumably meant accounts and the matter was argued on that footing. But the allegation does not disclose at all in what respect there has been non-compliance with any provision of law. The accounts have not been produced before us. Mr. Asok Das attempted to persuade us to draw certain adverse inferences but he was by no means clear as to what inferences should be drawn. The petitioner for the first time demanded production of the account books when the respondent himself (R.W. 62) was in the witness box. The respondent, of course, was under no obligation to produce them until their production was demanded; for, in dealing with a charge of corrupt practice we are concerned with the falsity of the Return and not with irregularities in the account [section 124(4)]. The next day, there was a petition filed by the respondent that he had unsuccessfully searched for his account papers and was unable to produce them that day. The evidence having closed on that day (R.W. 62 being the last witness to be examined), the matter was left there. The petitioner did not demand their production any time between the close of evidence till arguments. It is nobody's case that accounts were not maintained and we are now asked because the account papers were not produced, to draw some vague inference that the accounts were not maintained in accordance with law. It is sufficient to say that nothing has been shown to us to prove that there was non-compliance with any provision of law with regard to the accounts that were maintained by Respondent No. 1.

With regard to the allegation in paragraph 17, the petition is this: in February, 1952, closely following the result of the election, there were paid out from the discretionary fund of Respondent No. 1 certain moneys to a number of persons—persons, who according to the petitioner, were his workers. The respondent at page 15 of his deposition admits that the following grants were made on the 8th or 9th February, 1952 to

Alekh Pd. Sarangi, Rs. 800.

Kiranbala Samanta, Rs. 100.

Bhola Nath Mohanty, Rs. 100.

Kalikrupa Dutt, Rs. 800.

Surendra Singh, Rs. 700.

Sudha Rani Das, Rs. 200.

Nabakishore Singh, Rs. 100.

According to the petitioner, all these persons were workers and canvassors of the Respondent No. 1 and were remunerated by these grants. Of them, at least one person, Bholanath Mohanty had admittedly done some work for the respondent in connection with the election. Ext. 14 is a letter by Alekh P. Sarangi to the Manager, *Modesh Press* in which he admits that he has prepared the accounts of the Respondent No. 1. There is no doubt, therefore, that Alekh Prasad Sarangi had also done some work for the respondent in connection with the election. There is no evidence about Surendra Singh, Sudha Rani Das and Nabakishore Singh. About Kiranbala Samanta and Kalikrupa Dutt, respondent denies that they ever did election work for him. But there is a clear admission by one of his witnesses (R.W. 10) that Kalikrupa Dutt canvassed for Respondent No. 1. This witness also says that Kiranbala Samanta had done canvassing but he cannot say for whom. We hold, therefore, that of the 7 persons mentioned Alekh Prasad Sarangi, Bholanath Mohanty, and Kalikrupa Dutt were and had worked for Respondent No. 1.

The real question however is: are these grants "election expenses", the omission of which from the Return constitutes corrupt practice? As to the giving of such a reward, it is not shown how it violates any statutory provision although at one stage Mr. Das faintly suggested that it amounts to bribery. Under Section 123(1) bribery is a gift or a reward for standing or not standing as, or for withdrawing from being, a candidate or for voting or refraining from voting at

an election. Consequently a reward for working is not bribery, however reprehensible it may be for a Minister to use public funds for the purpose. Mr. Das, therefore, has argued on the footing that it is really an item of election expense and should have found place in his Return.

We do not see how it can be regarded as such an expense. Firstly the respondent did not pay himself nor did the Government pay 'on his behalf or in his interest' (so as to be included in Part K of the Return). Secondly, that alone can be regarded as an expense which is paid or payable under a claim. If a person works for a candidate who being a Minister subsequently rewards him from his discretionary fund, it cannot be said that the candidate incurred the expenditure. It is not even known that a prior promise was made. We do not say that that would necessarily mean that it would become expenses payable in the future. But here all we know is that some persons were paid from the discretionary fund after the election. An examination of form 26 shows that it could not be appropriately put under any of the heads Parts A to K. As we have said, this method of rewarding workers (assuming that the grants were really rewards) may be highly objectionable but does not appear to violate any provision of law. Moreover there is no materials to hold that they were payments for work done. We accordingly hold that the omission of the various grants does not infringe section 124(4).

We come next to the allegations in paragraph 16. These may be divided into four heads—(1) cost of posters, (2) cost of pamphlets, (3) expenses for using motor cars and (4) payments to workers.

As to posters, it is alleged that the respondent received from the Provincial Congress Committee a number of posters which were displayed in the constituency. The respondent says that he never paid for them and that the petitioner has adduced no evidence to contradict him. Therefore, he never incurred any expense. But it is urged that he should have put their value under the head 'Receipts' in paragraph 1 of the Return. About their receipt, the respondent states as follows:

"I do not remember if I got any poster from the Provincial Congress Committee. Posters bearing the photo of Sri Nehru were distributed in the Constituency. I never bore the cost of the above posters."

It is to be remembered that there was another Congress candidate for the Parliamentary constituency. Obviously the Congress organisation was displaying posters etc. in the constituency both for the Parliamentary as well as the Assembly candidate. It may be argued with some force that it should have been included under the head 'receipts' because it is 'equivalent of money received from an organisation.' However it is not possible to say that this makes the Return false "in any material particular". Moreover, it does not appear how the omission of such an item has materially affected the result of the election.

As regards pamphlets, the respondent has in fact shown considerable amounts of expenses incurred for printing them. But it is alleged that two pamphlets namely, 'THE CONGRESS VOTO GITA' and 'KISSANNAGARA ANCHALAR BARTAMAN O BHAVISAYAT', were printed and published at his cost which was not shown in the Return. These pamphlets are not exhibited but are marked X and X/1 for identification. The respondent admits that they were distributed but denies that he got them printed or published. There is no reliable evidence that he did and we hold, therefore, that costs in respect of these pamphlets should not have found place in his Return.

There is another pamphlet "BARUBULAR TIPAKHATA", 30,000 copies of which were admittedly printed and distributed by the respondent. The costs have been shown in his Return and it tallies with the entries in the Order Book of the Jyoti Press, where it was printed [Ext. 9(a)]. The criticism is that the entries in the Order Book of the Press show that the Press did not charge for the paper but for printing only. It is, therefore, argued that the cost of paper should have been included in his Return. In cross-examination it is suggested to the Respondent that he got them printed on paper which was the property of the Government. In ext. 9(a) under the column, "whether paper was supplied or not", there have been three different entries two of which have been penned through and one of such penned through entry is that paper was not supplied and the cut is not endorsed by any initial of the Press Manager unlike the other cut-through entry. The Manager of the Press has not been examined and his successor is P.W. 19 who only proves ext. 9(a) but can throw no light on it.

According to P.W. 19, thirteen reams of double Crown white printing paper were required for printing the pamphlets, the price being Rs. 16 or Rs. 17 per ream. The cost of paper is, therefore, a little over Rs. 200. The Respondent in his evidence says that the payment of Rs. 300 was inclusive of paper. The charge for printing 5,000 copies of the pamphlet (Ext. 8) is Rs. 45 to Rs. 60 as stated by P.W. 19. The contention for the petitioner is that the printing cost of 30,000 copies would be Rs. 270 to Rs. 300 and that if cost of paper is added then the charges would exceed Rs. 500. The respondent was not cross-examined to explain how he could get the Pamphlet printed for Rs. 300 when the total expenses including cost of paper would have exceeded Rs. 500. It is apparently fallacious to assume that if the Printing cost of 5,000 pamphlets would be between Rs. 45 to Rs. 60 the printing cost of six times the same volume would be six times the printing cost of the former Ext. 9(a) leads to no definite conclusion as to if papers were or were not supplied. It is not unlikely that the respondent might have paid the printing cost of Rs. 100 or little more when he was getting so many pamphlets printed at a time. So the petitioner's case that cost of papers were not mentioned in the election expenses stands on no foundation. Even if the cost of papers were not included we do not think that we can go so far as to hold that the Return is false on account of this omission. Every omission does not make the Return false. It must be deliberately incorrect. Some corrupt motive is necessary (See Sen & Poddar—Indian Election Cases page 275 at page 282). By omitting this item the Respondent gains nothing. So far as the result of the election is concerned, it has not been shown in what way the omission of this item has affected it.

As regards the number of motor cars used by the Respondent in his election campaign, the case of the parties as disclosed in the evidence is this; according to the petitioner the Respondent used one car and one jeep belonging to himself, four jeeps belonging to P.W.D. contractors and one bus belonging to the Cuttack Motor Association. According to the Respondent he used his own car, or one jeep at a time, on exchange from his friends. He denies that he had a jeep or that he used the motor bus or the jeep of any contractor P.W. 2, (the petitioner) and P.W. 36 deposed on this point. The Respondent's witnesses on the point are R.Ws. 41, 43 and 62. P.W. 2 says that he saw a bus and four other jeeps, apart from one jeep and a car belonging to Respondent No. 1, used by him in the election. The contractors mentioned are Birja Pd. Rai, A. C. Sahu, Bansidhar Mohapatra and Shyam Sunder Mohanty". P.W. 36 is Shyam Sundar Samantra, a P.W.D. contractor. It is not clear from the evidence of P.W. 2 how he identified the jeep belonging to these persons. Not a single registration number is mentioned by him. No other witness corroborates him except P.W. 36 (with regard to his own jeep). The name of P.W. 36 was not in the list of petitioner's witnesses. Towards the close of his evidence the petitioner filed a petition that he was in the court compound and might be summoned immediately. He was then summoned and examined that day. Mr. Mohanty complains that he had no opportunity to get sufficient instructions to cross-examine him. Why he deposed against the Respondent is difficult to say; he says he gave his jeep and Rs. 2,000 to the respondent for his election propaganda. However that may be, it is not safe to rely upon his uncorroborated testimony. Moreover it appears that he was not registered in respect of a jeep until 10th February 1953 (as deposed to by R.W. 43, a clerk in the police office).

Regarding the use of the bus, the petitioner's evidence is not corroborated and we are not prepared to act upon it when the respondent (R.W. 62) and the Secretary of the Cuttack Motor Association (R.W. 41) have denied that it was used.

As regards A. C. Sahu and Bansidhar Mohapatra, there is evidence to show their connection with the respondent. For instance, voucher No. 65 in his Election Return (Ex. 21) is in respect of the repair charges of a jeep bearing the number BLB 7333 with regard to which he says "This jeep might be of A. C. Sahu". Bansidhar Mohapatra's name finds place in several vouchers, bills (e.g. Ex. 19) etc. Yet the respondent vigorously denies any connection with these persons. There are several vouchers for repair of jeep, haulage of a jeep from the bed of a river, spare parts etc., which the respondent does not explain as expenses in respect of the jeep of his friends (Sri Motilal Pandit or Sri Biren Mitra). The evidence, we think, leads to suspicion that more than one jeep and one motor car was used. But we have found it unnecessary to discuss this evidence in more detail because it does not bear upon the real point.

What we are concerned with is the correctness or otherwise of the Return so far as expenses for use of vehicles are concerned. If more vehicles than the respondent is prepared to admit, were used at the election by him, it does not

necessarily follow that the election Return is false. For, we find considerable expenditure for petrol, spare parts and repairs actually entered in the Return. In the absence of positive proof that more expenditure was incurred than shown and of the approximate expenditure so incurred, it is not possible to hold that the Return itself is false.

The point regarding omission from the Return, of payment to various workers can be shortly disposed of. Parts B and C of the Return do show payment to about thirty persons. It is not shown who else was paid and whose name has been omitted. It is, therefore, unnecessary to go into the details of the evidence about the Respondent's workers. But it is said that Rule 118 read with Schedule VI prohibits payment to any worker. What the Schedule permits is payment to (a) one polling agent and two relief agents for each polling booth and (b) one messenger at each polling booth. The Election Return shows payments to 'Messengers' (and 'agents'). The petitioner says that workers have been described as "messengers" e.g. Natabar Bhuiyan, admittedly the chief worker of the Respondent. Therefore, the Return is false as well as against law. But the word "messenger" has not been defined. It may well include a 'worker' (which is the petitioner's own word and not the Statute). At any rate, the Statute is not violated if a worker is paid as a messenger and so described in the Return. As regards the requirement of Schedule VI as to the number, there is no infringement since the Respondent could employ and pay as many as 23 messengers in the 23 polling booths in the constituency. Of about 30 people shown in Parts B and C, 17 are messengers and the rest are agents. The petitioner, therefore, has failed to establish his allegation about payment to workers.

On all the questions discussed above regarding election expenses, it may be repeated that assuming that the allegations are true, there is nothing to show that the alleged falsity in the Return has affected the result of the election in any way. We hold, therefore, that the election of the Respondent No. 1 cannot be set aside on the ground of the minor corrupt practice if any under Section 124(4).

On the above findings we conclude that all these issues be answered in the negative except issue No. 9 which is hereby answered in the affirmative.

Issue No. 4.—The decision of this issue relating to the facts alleged in the petition of recrimination, is not necessary in view of our above findings and decisions, but it is advisable to record our findings in short on the point pressed before us at the time of hearing which may be formulated as below; various other points raised in the petition of recrimination having not been pressed:—

(1) Is the petitioner guilty of corrupt practice under section 123(8) by procuring the assistance of the following Government servants in furtherance of the petitioner's prospect of election.

- (a) Paramananda Pradhan of Kamarpada;
- (b) Kailash Chandra Patnaik of Katuan;
- (c) Dolagobind Mohanty of Malipur.

(2) Is the petitioner guilty under section 123(5) for carrying on false propaganda that—

- (a) The respondent No. 1 'Stole' water from the Jagatsinghpur canal;
- (b) He stole yarn from the stock of Kesannagar Multi-Purpose Co-operative Society;
- (c) He was bribe taker;
- (d) Votes cast in favour of respondent No. 1 would be throwing them away as he being proposed and seconded by Government servants, his election, even if made, would be set aside.

Point No. 1.—*Paramananda Pradhan.*—Unquestionably he is or was an employee in November 1951 in the office of the Registrar, Co-operative Society, R.W. 54, an assistant of the office has been examined and he has not been questioned on the point. R.Ws. 6, 7, 57 and 58 have spoken about canvassing by this man for the petitioner. Of these, R.W. 58 is the sole worker of the respondent and as such greatly interested. R.W. 57 becomes also an interested witness because he is close relation being the sister's son of R.W. 58. R.W. 7 does not appear to be a truthful witness because according to him Paramananda who is now posted at Bhubaneswar was employed during election at Cuttack, but R.W. 54, the assistant in that office stated in cross-examination that Paramananda Pradhan was posted and the office was also, at Bhubaneswar in November 1951, i.e. the election period. The only witness remaining is R.W. 6, who admits

to be a Congress supporter from the very beginning. Moreover the respondent who was then a Minister did not report against this Government servant or as a matter of fact any other Government servant alleged to have been working for the petitioner. This is rather very unusual if Paramananda had actually canvassed for his adversary. Moreover the items of particulars with the recriminatory petition is none-the-less vague than the petitioner's list of particulars. It does not disclose the actual place and date of the alleged propaganda or canvassing. There is absolutely no evidence, if he canvassed at all, that it was to the knowledge and connivance of the petitioner or his workers. Besides P.W. 39 though comes unsummoned, has denied canvassing by him and says further that his father Ananda Pradhan canvassed for the Congress. It is gathered from R.W. 57 that there is Bapuji Seva Sadan at Jasapada. Ananda Pradhan, father of Paramananda is President of that Committee. R.W. 58 admitted that members of Bapuji Seva Sadan are supporters of Congress. This circumstance also apart from want of positive reliable evidence, leads us to hold that the canvassing by this Government servant has not been proved beyond reasonable doubt.

Kailash Chandra Patnaik.—There is considerable discrepancy in evidence about the correct name and address of this man. In the petition of recrimination Kailash Chandra Patnaik of village Katuan, an employee of the Rice Research Institute of Bidyadharpur is said to have carried on propaganda for the petitioner. The very first witness of the respondent Urdhab Charan Nath commenced saying Kailash Chandra Patnaik *alias* Khuntia canvassed for the Socialist party. He could not say, however, if Kailash Khuntia lived in the village or in the Farm but he stated to have seen him coming to and going back from the village on cycle on the canal embankment. It is doubtful, therefore, if he had actually seen the man canvassing whether he was Khuntia or Patnaik. R.W. 6 spoke about Kailash Khuntia of Katuan canvassing for the petitioner though he himself had no talk with him about votes. According to him this Kailash Khuntia was a clerk in the Farm. R.W. 7 also speaks of canvassing by Kailash Khuntia. According to him, this Kailash Chandra Khuntia lives in his house in the village and not at Bidyadharpur where he works. During election period also he was living in the village about 6 to 8 miles from his office. Village Katuan is said to be 1 mile from his village Barimunda. According to him, he is a *peon in the Farm* and each time he states to have seen him between 8 p.m. and 9 p.m. He himself is a discharged 'not dismissed' peon of the Cuttack Collectorate. R.W. 53 Accountant of the Central Rice Research Institute started saying that Kailash Chandra Khuntia *alias* Patnaik was an employee in office in November 1951. In cross-examination he had to admit that Kailash Chandra Patnaik of Kesanagar is employee in his office and not Kailash Chandra Khuntia *alias* Patnaik and he stated to have said so in chief because it was so written in the summons. Kailash Chandra Patnaik was occupying a room in office, working hours being 7 to 11 a.m. and 3 to 5 p.m. in November 1951 to January 1952. Hence apart from the discrepancy in name and address of the man there was little time for him to undertake canvassing in or near his village at a distance. R.W. 57 of Kosida again started saying that Kailash Chandra Patnaik of Katuan was known as Kailash Chandra Khuntia. But in cross-examination he had to concede that Khuntia is Khandayat and Patnaik is Karan by caste. Consequently it is hard to believe that a Patnaik can be called Khuntia in alias surname. R.W. 58 states to have seen Kailash Chandra Patnaik canvassing at Archhile. But neither the place nor the time of actual canvassing is to be found in the list of particulars appended to the petition of recrimination. On the other hand P.W. 39 has denied any such canvassing by Kailash Chandra Patnaik. For what the denial is worth, the respondent on the evidence, as discussed above, has failed to substantiate his case of canvassing by this Government servant as well.

Dolagobind Mohanty.—He is undisputedly an employee in the Government Press, Orissa. None of the respondent's witnesses except he himself have spoken about canvassing by this man. R.W. 56, Time-keeper of the Government Press has come to say that this man is an employee of the Press and he has proved entries Exts. Y to Y-2 in the attendance roll which he brought although not called for. R.W. 58, the worker of the respondent does not know even Dolagobind Mohanty. Had this man been canvassing, as is the evidence of the respondent, he as his worker all round must have known the man. The respondent R.W. 62 states to have seen him canvassing near Malipur but did not report about it to his superior officer. His interested uncorroborated testimony cannot be relied upon beyond doubt. Moreover it transpires from the evidence of Madhu Sudan Mohanty R.W. 11, that Gopinath Mohanty, brother of this Dolagobind Mohanty is his orderly from 4 years back.

We, therefore, can have little hesitation in holding that the case of canvassing by all these Government servants has not been proved.

Point No. 2.—This point relates to false propaganda, being a corrupt practice under section 123(5). On the different propagandas, alleged as above, besides the oral evidence, there are certain 'Krusnak' papers brought on record by the parties. 'Krushak' is admittedly a Socialist party paper. Ext. B is 'Krushak' dated 9th November, 1951 containing a speech by Sri Dwibedy at Kesanagar meeting on 25th October, 1951 regarding the activity of the respondent and interference in Government affairs. 'Krushak' dated 21st September, 1951 is Ext. 17 wherein the respondent is styled as a stealer of yarn. Ext. Z-6 is an article in 'Krushak' dated 21st December, 1951 Ext. Z-1, containing statement of one Banka Bihari Das, Secretary of the Socialist party. Therein it is mentioned that if the respondent be elected he would be unseated as Government servants had proposed and seconded his nomination papers. Casting of votes in his favour would be throwing them away to water. Ext. Z-3 is 'Krushak' dated 25th January, 1952, i.e. after polls wherein Raj Krishna Bost (respondent) is said to be a stealer of yarn.

But there is nothing to connect the petitioner in particular with all these 'Krushak' writings except that he belongs to the Socialist party. The petitioner is not any office-bearer of the Socialist party and so he cannot be held directly responsible for party propaganda, if any. He was neither the Editor of the paper during the election period ending by 24th January, 1952. He is working however, as such from a year (i.e. June 1952). Before him Pradipta Kishore Das was the Editor.

Coming now to the oral evidence, R.W. 1 states to have seen one Nanda Kishore Khuntia pasting a poster wherein the respondent was mentioned as "Killapota" (bribe-taker) and a stealer of yarn. Again, there is nothing to connect the petitioner or his worker with any such poster, if at all. It has not satisfactorily been proved that Nanda Kishore Khuntia was actually a worker of the petitioner. R.W. 3 has said about propaganda against the respondent that he was bribe-taker and enriching himself and moving in motor cars. The workers of the Socialists were also saying about 10 to 12 days before the polls that even if the respondent is elected they would get his election set aside as Government servants have proposed and seconded his nomination form. He also states to have seen black flags in Kesanagar Bazar wherein it was written "Go back student-killer Naba Krishna Choudhury" and "Go back bribe-taker Raj Krishna Bose." But about the latter poster regarding Raj Krishna Bose there is no mention in the Station Diary entry Ext. 4 although it does make mention of the poster about Sri Naba Krishna Choudhury. He also stated that Dhruva Singh and Bhramar Mohanty had told him that the Chief Minister was the student-killer and respondent No. 1 was the bribe-taker. There is no convincing evidence on record that these persons were actually propagating to the knowledge and connivance of the petitioner. Similarly R.W. 4 stated about the propaganda of the respondent being a bribe-taker, a stealer of yarn and a 'Bengali'. This last point has not been pressed. This witness admits himself to be a well-wisher of the respondent and he wished him success and not the petitioner. So, the propaganda, as alleged by him had no effect. R.Ws. 5 and 6 have also spoken about the propaganda by the petitioner himself and that too in meetings at Gorasuni and Kamarpada where 150 and 200 men respectively had gathered. There the petitioner said to have characterised the respondent not only as bribe-taker but as 'Bengali'. It is hard to believe that the petitioner would take the risk of appealing to caste feelings specially when as is found from the evidence of these two witnesses themselves that Atal Bihari Mandal, a Bengali weaver was a canvasser of the petitioner and a Socialist pamphlet marked 'X-2' for identification had as many as 27 'Bengali' signatories to it. These pamphlets R.W. 6 stated were distributed at Kesanagar Hat on behalf of the Socialist Party. The respondent himself conceded that there were many Bengali families at Raghunathpur where the petitioner had polled greater number of votes while at Kalikapur where only a few Bengali lived, he himself polled larger number of votes. Such being the position, it is difficult to believe that the petitioner, as a man of ordinary prudence would rake up Bengali and Oriya question in public meetings. Therefore, the truth of evidence of these witnesses stand at stake. R.W. 18 spoke of a meeting held at Narda where the petitioner asked for vote for the Socialist and not for the Congress because lands would be taken from big Zamindars and distributed at 12 Mans per head to cultivators. This evidence if true certainly cannot come within the mischief of section 123(5) R.P. Act and it cannot tantamount to personal vilification of the respondent. R.W. 39 has spoken about the Socialists' propaganda that Congress had stolen yarns, canal water and it was for them that they were not getting sugar, kerosene oil and cloth and so they should not vote for the Congress. This statement by itself cannot be held to

have cast any personal aspersion on the respondent. The witness as a matter of fact conceded in cross-examination that during Congress regime black-marketing and profiteering were going on. The next witness R.W. 45 Batu Parida is not a witness on the point of propaganda but he has stated about forcible cutting away of his own crops by some persons said to be Socialists because he refused to be a member of the party or to subscribe towards holding of a Socialist meeting. He has proved his complaint petition Ext. U, compromise petition Ext. U-1 and plaint filed in a civil court Ext. V saying that both were compromised on payment of compensation. But in this connection his earliest report at the Police Station marked Ext. A-A marks no mention of any Socialist hand in the case which was one of mere civil nature of land dispute. Any way, his evidence is immaterial on the point under consideration. R.W. 46 besides supporting this Batu Parida has spoken about a Socialist meeting at Somepur within Jagatsingpur P.S. where he himself resides. In that meeting Nisamani Khuntia is said to have asked them not to vote for the respondent as he was Bengali and a stealer of yarn and canal water. There is no reliable evidence to connect Nisamani Khuntia or his statement as alleged, with the petitioner or his worker. He himself is a Congressman and states that there is no shortage of canal water in his side. Similarly R.W. 48 while stating about the propaganda of some, said to be of Socialist party, that the respondent was Bengali and had not done good to them but rather was doing black-marketing in yarn, conceded that by the new canal people of Jagatsingpur were not inconvenienced.

The only other witness on the point of false propaganda is the respondent R.W. 62 himself whose evidence needs some scrutiny. He stated that the workers of the Socialist party were propagating that as Government servants had signed his nomination form, they by a case would get the election set aside and the votes cast in his favour would amount to throwing votes in water. The petitioner himself has denied at more than one place any such propaganda personally but it is found mentioned in the 'Krushak' as mentioned above. Besides this might have been the common notion prevailing at the time on reference to section 123(8) R.P. Act before the decision of the Supreme Court on this point.

Again, he has stated that the petitioner and his workers were saying in Jagatsingpur that on account of the excavation of the canals they would not get any water as the water would flow into the new canal. They also are said to have characterised him as stealer of water. It is a fact that the respondent while he was the P.W.D. Minister diverted a part of the water from Jagatsingpur canal to Kisenagar area by opening a branch canal and there was diminution of water supply to Jagatsingpur area consequentially. It is further an admitted fact that that branch canal passed by some of the land of the respondent himself. The propaganda may not consequently be altogether misconceived. But we have already found that there is no convincing evidence to connect the petitioner and his admitted workers with the alleged propaganda of the respondent being a stealer of water. As a matter of fact the respondent had to concede that he himself had not heard any body calling him stealer of water but that he had heard reports about it and had seen posters. Besides the petitioner himself denied to have made any such propaganda.

Next he says that they used to say in the constituency that he was a stealer of yarn. It is gathered from his evidence in this connection that there was a Multi-Purpose Co-operative Society at Kesannagar dealing in yarn, and he was the President of the Society. The Secretary of the Society took some yarns for the Society but as he could not get transport, he kept the same in residence of the respondent at Cuttack. A rumour was spread that the yarn was misappropriated. It was on this account according to him, that the Socialist party were saying that the respondent was a stealer of yarn. Further, it is gathered from his evidence that the Registrar, Co-operative Society went to the Multi-Purpose Co-operative Society at Kesannagar for enquiry about the yarn which he could not get there. The Registrar was informed by the Secretary that one bale of yarn was at Cuttack in the respondent's quarters. The Registrar went to his quarters and saw one bale of yarn. He reported to Government, a copy of which was received by the respondent also but strangely enough he says, that he does not know if the Registrar in his report to Government had written about the recovery as "better late than never". At that time there was admittedly great shortage of yarn and if there was any general allegation or rumour as admitted by the respondent, the petitioner or his workers cannot in particular be found fault with for any such propaganda like 'stealer of yarn'; although it is not satisfactorily proved that they as a matter of fact, were in any way responsible for or raised, any such propaganda. Nevertheless, there existed some feeling on these scores of water and yarn in public as would also be evident from the Legislative Assembly proceedings, Exts. 25 and 25(a).

Next the propaganda about the respondent being bribe-taker, we find the evidence, as already mentioned of R.Ws. 3, 4, 5 and 7 besides R.W. 62 himself. As this is rather a serious charge, it has to be seen if the petitioner and his acknowledged workers are proved to have carried on such a propaganda. R.W. 3 has said that the workers of the Socialist party were telling them but we have already mentioned that the petitioner according to his own evidence, was not any office-bearer of the Socialist party and as such he cannot be held personally responsible for party propaganda, if any. He, further specified that Dhruva Singh and Bhramar Mohanty had told him; but from the petitioner it has not been taken that they were actually working on his behalf. The evidence of R.W. 4 is as vague as the previous one. But in cross-examination he stated that "some of the voters were inclined towards the petitioner after hearing Duryodhan Das, when he was saying that respondent No. 1 was a bribe-taker and a thief". Duryodhan was examined before as P.W. 5 in this case and he denied having canvassed after receipt of letter, Ex. 6. But no question was put to him in cross-examination regarding the alleged propaganda by personal verification of the respondent. Hence it is difficult to rely on his sole testimony regarding Duryodhan. R.W. 5, no doubt, has spoken that in a meeting the petitioner had asked them not to vote for the respondent as he was a Bengali and a bribe-taker. We have already discussed above to disbelieve the evidence of this witness and it is hardly likely that the petitioner would take the risk of characterising the respondent, then a Minister, as a bribe-taker in open public meeting. R.W. 7 speaks in general that Socialists were saying that the respondent was a bribe-taker. There is nothing to connect the petitioner or his worker with any such statement. R.W. 62, no doubt, has spoken about such propaganda by the petitioner and his worker. He similarly spoke regarding propaganda about his being a stealer of water. But he had to concede as already mentioned that he himself had not heard anybody calling him a stealer of water. It is quite likely that he himself did not hear the petitioner or his workers raising this propaganda also and his evidence might be derived or hearsay only. Moreover had the respondent heard any such allegation by the petitioner or his men in his face he would certainly have taken legal action against such a propagandist. But he admits to have taken no such legal step in the matter.

Therefore, on the analysis of the evidence as above this propaganda of 'bribe-taker' also has not been substantiated as against the petitioner and his workers. The learned lawyer for the petitioner at the time of argument needlessly tried to cast some aspersion on the point, but we are to point out that mere suggestions to witnesses or to the respondent himself cannot build up any such case now. Simply that he has taken some loans from the Grow More Food Department, has purchased some lands, built up a pucca house and has not repaid the price of the car purchased on taking loan from Government while a Minister cannot lead to any adverse inference. Attention is also drawn to the statement of the Secretary, Central Co-operative Bank R.W. 37 as to how he denied and avoided to admit payment of Rs. 10,000 on cheque Ext. 20 to the Multi-Purpose Co-operative Society, Kesannagar of which the respondent was the President and one Mahendranath Das was the Secretary although according to the respondent himself this witness had passed an order for payment of Rs. 10,000 on the back of Ext. 20. The respondent nevertheless admitted these facts and he also admitted that an award against him and the Directors has been made for Rs. 7,000 and odd and Ext. A-D is the copy of the order sheet in the said Award Case. He denied, however, the suggestion about misappropriation of any amount of the said money and there is hardly any positive evidence on the matter. There is also suggestion about the respondent having taken undue advantage of being a member of Choudhury Commission which was formed for the abolition of the Zamindari in so far as he had obtained some lease or gifts from a landlord, Shri K. K. Bose. But the suggestion stands denied and there is no affirmative evidence. P.W. 36, a P.W.D. contractor has been examined to say that he had paid Rs. 2,000 to the respondent for his election expenses. In cross-examination, however, he stated to have paid the amount for Congress propaganda. The respondent has denied any such payment. But his statement about this witness having been fined by his predecessor-in-office and about its subsequent remission, cannot lead to any sure connection with the alleged payment of Rs. 2,000 for election expenses because the respondent could not say if the remission was made in his time. Besides, this witness is examined on petition and without summons. Similarly a suggestion was made that as the matter of taking over of Cuttack to Puri line by the Government was dropped, so the Cuttack Motor Association contributed Rs. 5,000 towards his election expenses remains a mere suggestion. Suggestions merely, without any evidence or proof stand no where and the learned lawyer would have done well in not arguing the matter on mere conjecture and surmise. This is clearly beyond

our scope to scrutinise the deeds or misdeeds of the respondent as a Minister. Besides, question of justification if at all, does not arise when as already said, the petitioner or his worker is not found as fact to have vilified the respondent as bribe-taker.

Considering as above and bearing in mind that according to requirements of section 123(5) the burden was on the respondent to prove that the petitioner or his worker made such statements knowing them to be false, or having reason to believe that they were false—the respondent's own evidence which is shaky throughout does not satisfy the test—we are constrained to hold that the two points pressed viz. canvassing by Government servants and raising of false propaganda by petitioner or his workers remained unsubstantiated beyond reasonable doubt and consequently the issue failing it must be answered in the negative.

Issues Nos. 5 to 8.—On the above findings and decisions we hereby hold and decide that neither the election is to be declared wholly void nor is the election of respondent No. 1 liable to be declared void. Consequently it follows that the petitioner is not entitled to be declared a returned candidate and as a matter of fact is not entitled to any reliefs. The issues are answered accordingly.

In the result, the petition and the recrimination petition are both dismissed. We propose, however, to make no order for costs because the petitioner had some genuine grounds for coming to Court. The prevailing view of section 123(8) until the decision by the Supreme Court in this case was, as ventilated in local papers also, that signatures by Government servants as proposers or seconders did by itself contravene the provision of the section. Besides on facts also, as discussed above, the petitioner has to a large extent failed because of indefinite pleading in the petition and list of particulars attached thereto rather than on merits of the respondent's case or evidence. On several points benefit of doubt has weighed in respondent's favour. We cannot also omit to mention in this connection the way in which the parties comparatively deposed before the Court. While the petitioner was not evasive in his answers, the respondent's statements in cross-examination were often evasive and not straightforward. Each party shall, therefore, bear his own costs. Dictated and corrected by us.

(Sd.) J. K. MISHRA, *Chairman.*

(Sd.) K. D. SAHAI, *Member.*

(Sd.) K. D. CHATTERJI, *Member.*

[No. 19/147/52-Elec.III/19315.]

By Order,

K. S. RAJAGOPALAN, *Asstt. Secy.*